

THE ADMINISTRATION'S AUTO BAILOUTS AND THE DELPHI PENSION DECISIONS: WHO PICKED THE WINNERS AND LOSERS?

HEARING

BEFORE THE
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES
AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JULY 10, 2012

Serial No. 112-178

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

75-807 PDF

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

DAN BURTON, Indiana	ELIJAH E. CUMMINGS, Maryland, <i>Ranking</i>
JOHN L. MICA, Florida	<i>Minority Member</i>
TODD RUSSELL PLATTS, Pennsylvania	EDOLPHUS TOWNS, New York
MICHAEL R. TURNER, Ohio	CAROLYN B. MALONEY, New York
PATRICK T. McHENRY, North Carolina	ELEANOR HOLMES NORTON, District of
JIM JORDAN, Ohio	Columbia
JASON CHAFFETZ, Utah	DENNIS J. KUCINICH, Ohio
CONNIE MACK, Florida	JOHN F. TIERNEY, Massachusetts
TIM WALBERG, Michigan	WM. LACY CLAY, Missouri
JAMES LANKFORD, Oklahoma	STEPHEN F. LYNCH, Massachusetts
JUSTIN AMASH, Michigan	JIM COOPER, Tennessee
ANN MARIE BUERKLE, New York	GERALD E. CONNOLLY, Virginia
PAUL A. GOSAR, Arizona	MIKE QUIGLEY, Illinois
RAÚL R. LABRADOR, Idaho	DANNY K. DAVIS, Illinois
PATRICK MEEHAN, Pennsylvania	BRUCE L. BRALEY, Iowa
SCOTT DESJARLAIS, Tennessee	PETER WELCH, Vermont
JOE WALSH, Illinois	JOHN A. YARMUTH, Kentucky
TREY GOWDY, South Carolina	CHRISTOPHER S. MURPHY, Connecticut
DENNIS A. ROSS, Florida	JACKIE SPEIER, California
FRANK C. GUINTA, New Hampshire	
BLAKE FARENTHOLD, Texas	
MIKE KELLY, Pennsylvania	

LAWRENCE J. BRADY, *Staff Director*

JOHN D. CUADERES, *Deputy Staff Director*

ROBERT BORDEN, *General Counsel*

LINDA A. GOOD, *Chief Clerk*

DAVID RAPALLO, *Minority Staff Director*

SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND
PRIVATE PROGRAMS

PATRICK T. McHENRY, North Carolina, *Chairman*

FRANK C. GUINTA, New Hampshire, <i>Vice</i>	MIKE QUIGLEY, Illinois, <i>Ranking Minority</i>
<i>Chairman</i>	<i>Member</i>
ANN MARIE BUERKLE, New York	CAROLYN B. MALONEY, New York
JUSTIN AMASH, Michigan	PETER WELCH, Vermont
PATRICK MEEHAN, Pennsylvania	JOHN A. YARMUTH, Kentucky
JOE WALSH, Illinois	JACKIE SPEIER, California
TREY GOWDY, South Carolina	JIM COOPER, Tennessee
DENNIS A. ROSS, Florida	

CONTENTS

Hearing held on July 10, 2012	Page 1
-------------------------------------	-----------

WITNESSES

The Honorable Christy Romero, Special Inspector General for The Troubled Assets Relief Program, United States Treasury Department	
Oral Statement	6
Written Statement	9
Mr. Ron Bloom, Former Member of the Automotive Task Force, United States Treasury Department	
Oral Statement	27
Written Statement	29
Mr. Matthew Feldman, Chief Legal Advisor, United States Treasury Department's Auto Team	
Oral Statement	33
Written Statement	35
Mr. Harry Wilson, Former Member of the Automotive Task Force, United States Treasury Department	
Oral Statement	38
Written Statement	40
Mr. Todd Zywicki, Professor of Law, George Mason University	
Oral Statement	65
Written Statement	67

APPENDIX

Report on GM Agreements With Unions Give Rise to Unique Differences in Participant Benefits	109
Timeline of Interview Requests	163
Follow up questions from Delphi Audit Interviews	165
A prepared statement from The Honorable Elijah E. Cummings, a Member of Congress from the State of Md to The Honorable Darrell E. Issa, a Member from Congress from the State of California, Prepared Statement	166
Harry Wilson Tapped By Teamsters To Rescue Ailing Trucking Company And Union Jobs	175
The Honorable Patrick McHenry, a Member of Congress from the State of North Carolina, Opening Statement	177
The Heritage Foundation Backgrounder, Auto Bailout or UAW Bailout?	179
The Honorable Paul Ryan, a Member of Congress from the State of Wisconsin, Prepared Statement	193
CAR Research Memorandum	194

THE ADMINISTRATION'S AUTO BAILOUTS AND THE DELPHI PENSION DECISIONS: WHO PICKED THE WINNERS AND LOSERS?

Tuesday, July 10, 2012,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES, AND
BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:03 a.m., in Room 2247, Rayburn House Office Building, Hon. Patrick T. McHenry [chairman of the subcommittee] presiding.

Present: Representatives McHenry, Guinta, Ross, Quigley, Maloney, and Speier.

Also Present: Representatives Turner, Kelly, Johnson, and Cummings.

Staff Present: Will L. Boyington, Majority Staff Assistant; Molly Boyl, Majority Parliamentarian; Drew Colliatie, Majority Staff Assistant; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Jaron Bourke, Minority Director of Administration; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Devon Hill, Minority Staff Assistant; Jason Powell, Minority Senior Counsel; Brian Quinn, Minority Counsel; Safiya Simmons, Minority Press Secretary; and Davida Walsh, Minority Counsel.

Mr. MCHENRY. The Committee will come to order.

This hearing is entitled The Administration's Auto Bailouts and the Delphi Pension Decisions: Who Picked the Winners and the Losers?

We have a distinguished panel before us today, but it is always the order of this Subcommittee by reading the Oversight and Government Reform Committee's mission statement. The Oversight Committee mission statement: We exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tire-

lessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

And that is what this hearing is about, the auto bailout decision and the winners and the losers that resulted from this.

We have a distinguished panel here today, and I will begin by recognizing myself for five minutes.

Today's hearing is about the transparency in government and fulfilling this Committee's commitment to provide the American people with answers and accountability. When Congress passed the Troubled Asset Relief Program, known as TARP or the bailouts, in October of 2008, at the height of the financial crisis, it was designed with a specific purpose: to take toxic assets off the books of large banks and financial institutions.

While today's intention is not to re-litigate TARP or the bailouts, it is important to discuss their consequences and, indeed, there are consequences. When the Government orchestrates a bailout, it is clear that there will be both winners and losers.

While some of my colleagues will spend a great deal of time talking about bailout winners, it is unlikely that you will hear them spend much time talking about the bailout losers.

Although their losses were significant, we are not here to discuss bond holders, who took a haircut in the auto bailout. We are here today to focus on non-unionized retirees at Delphi, who watched part of their pensions disappear while some of their coworkers were made whole. Those coworkers whose pensions were left intact were members of the United Auto Workers Union and they are clear winners of the auto bailouts.

A recent study from one of today's witnesses, George Mason University law professor Todd Zywicki, calculated that United Auto workers received approximately \$26 billion from taxpayers via the auto bailouts that they would not have received had they been treated according to standard bankruptcy principles. Mr. Zywicki is a witness here today and we look forward to hearing from him.

When the Pension Benefit Guaranty Corporation terminated the pensions of all Delphi retirees, General Motors agreed to top-up, or make whole, their obligations to unionized workers. At the same time, the non-unionized workers took significant cuts in their pensions.

Despite the fact that GM's promise to the Union could have been thrown out in bankruptcy, like so many of GM's other non-unionized commitments were, the Union agreement was kept in place. That was a decision made by the Government.

The Special Inspector General for the Troubled Asset Relief Program has been seeking answers to questions about the irregularities of the Delphi pension decisions. Ms. Romero is a witness here today as the Special Inspector General for TARP.

We are here today because for over a year three of the key figures involved in the GM and Chrysler bailouts have refused to meet with the Special Inspector General. I am grateful that they showed today, and we are very interested in hearing their testimony and the reasons for not meeting with the Special Inspector General.

On May 9th, the Special Inspector General notified the Committee that three former Obama Administration officials before us today, Mr. Bloom, Mr. Feldman, and Mr. Wilson, had been uncooperative with the Special Inspector General's audit. These three individuals come from diverse backgrounds and possess different expertise, but together represent leading figures from President Obama's Auto Task Force. All three of these individuals made pivotal decisions which are projected to cost taxpayers \$23 billion and have left many Delphi retirees with drastically reduced pensions, while preserving full pensions for Delphi's unionized retirees.

These are the consequences of the bailouts.

So, with that, I would recognize the Ranking Member, Mr. Quigley of Illinois, for five minutes, and following that I will recognize Mr. Turner from Ohio for five minutes for an opening statement, and if the gentleman would like five additional minutes, we would be willing to grant that.

Mr. QUIGLEY. Thank you, Mr. Chairman. I appreciate that. I am sure it won't be necessary in today's hearing. I want to thank the Chairman for holding this hearing.

No one understands or appreciates the importance of transparency and strong oversight in government more than members of this Committee. Congress created the Office of Special Inspector General for the Troubled Asset Relief Program, SIGTARP, and members of Congress asked SIGTARP to perform its Delphi audit.

Unfortunately, SIGTARP's audit has been stalled because they have not been able to interview three of the witnesses here today, Ron Bloom, Matt Feldman, and Harry Wilson, who are all former members of the Administration's Auto Task Force.

In preparation for this hearing, the Democratic staff spoke with all three individuals and discovered they are willing to be interviewed by SIGTARP. This is a positive development and I am glad that SIGTARP will now be able to complete its audit.

SIGTARP's audit should complement the thorough work GAO has already completed on the Delphi pension issue. GAO published its findings on Delphi pensions in December of 2011. The GAO concluded that "Treasury deferred to GM's business judgment and that Treasury did not explicitly approve or disapprove of GM providing top-ups." Those are conclusions supported by the evidence gathered by GAO.

Today I am looking forward to hearing an update from SIGTARP on the progress of its audit, and I will be eager to read its final report upon completion.

But the most important conclusion that should be drawn from the Auto Task Force actions is that they helped save more than a million American jobs. As President Obama recently said, I was betting on the American worker and I was betting on American industry, and three years later the American auto industry is coming roaring back.

Thank you, Mr. Chairman. One second.

[Pause.]

Thank you, and I yield back.

Mr. MCHENRY. I thank the Ranking Member. In the Ranking Member's opening statement he suggested what we received in an email at 5:46 yesterday from the Minority staff, that you have a

commitment from the three Auto Bailout Task Force members today that they will meet with SIGTARP and fulfill that request that has been longstanding with them, and I thank the Ranking Member for getting those commitments and I thank the Minority staff for getting those commitments because it has been well over a year in the works of SIGTARP trying to get Mr. Bloom, Mr. Feldman, and Mr. Wilson to submit themselves for depositions.

With that, I would like to enter into the record the time line of interview requests from SIGTARP, beginning on May 5th of 2011 and going through May 16th of 2012, including an email we received last night at 9:40 p.m. from SIGTARP explaining that the three witnesses in question had no communications of any sort, indicating that they will make themselves available for the requested interviews in conjunction with our audit.

So without objection, those two documents will be entered into the record.

Mr. MCHENRY. Again, this is bipartisan work and I appreciate the willingness, Mr. Quigley, of you and Minority staff and counsel to get those commitments, so we are hopeful that transparency is served from that, and I know the gentleman has been very active on those issues of transparency and government. So thank you.

With that, I will recognize Mr. Turner of Ohio, who has been a leader on the subject matter of this hearing, for five minutes for the purposes of an opening statement.

Mr. TURNER. Thank you, Mr. Chairman. I would like to thank you and Chairman Issa and, of course, Chairman Jordan for the work that has been done on this issue and for holding this important hearing today.

Today's hearing continues our efforts to uncover why the Treasury Department, the Auto Task Force, and the Pension Benefit Guaranty Corporation chose to terminate the hard-earned pensions of Delphi salaried retirees in the course of its multibillion dollar taxpayer-funded bailout of General Motors.

Contrary to what the Vice President said recently on one of his campaign stops, that these retirees are doing fine, they are not doing fine. Thousands of retirees lost their pensions, many of which are in my community in Dayton, Ohio, as a result of the Administration's decisions during the auto bailout.

Appearing on CNN this Sunday, White House Chief of Staff Jack Lew proclaimed that this Administration is the most transparent ever. Well, not on this issue, and we are going to find out why today.

Understandably, I have serious concerns about how this Administration, including the three members of the Auto Task Force we have before us, have continued to stonewall, provided silence on these issues, and repeated failures to disclose information that are critical to the issues that have affected almost 20,000 people across the Country and that was done with taxpayers' dollars. This is not a venture that was undertaken with your own money, it was undertaken with taxpayers' money. And the openness that this Administration promised needs to be enforced.

In part, we are here today because the three former Auto Task Force members refused to meet with, speak to, or testify before the Special Inspector General for the TARP program. It is my hope

that we will shed light on who within the Administration made the decision to cut the hard-earned retirement benefits of these Delphi salaried retirees and that perhaps the Administration's policy of denying access to this information, hiding behind backroom deals stops.

I want to thank Christy Romero and SIGTARP for being here today and for your honesty in your letter. You wrote us a letter that said that SIGTARP believes that the Auto Task Force played a role in the pension decision and these individuals' failure to speak to SIGTARP on this issue poses a significant obstacle to SIGTARP's ability to complete this audit. And then you acknowledged that you didn't have an ability to subpoena these three gentlemen to make them testify.

You also acknowledge in your written testimony that you commenced this as a result of several members of Congress, including myself, asking you to undertake the audit to get questions answered about how this process went forward.

Mr. Bloom, Mr. Feldman, and Mr. Wilson, the happy train of silence and refusing to answer questions ends today. You have been summoned before Congress because of your refusal to answer SIGTARP's questions because they didn't have the ability to compel you. You are here today because you know we do. You didn't come here because you believed you wanted to share information with Congress; you were brought here because of your refusal to share the information that the American public is entitled to hear as a result of taxpayers' dollars that were used in the auto bailout of General Motors and thousands of people that lost their pensions. There is an accountability here.

Now, you are going to take an oath when you testify today. This is not a political proceeding; this is a legal proceeding. You will be testifying; you will not be giving speeches. That is why you are sworn in. It is called testifying before Congress. And in that I want you to rise to the level of understanding what the obligation is. It means that if you don't speak truthfully in front of us, that obviously you can be subject to perjury or disbarment or other types of consequences, because Congress takes people appearing before us seriously.

Now, we are hearing and we are looking forward to hearing from you, that you are now willing to cooperate, and I want you to also be aware that during that process of supposedly cooperating with SIGTARP, we have the ability to continue to enforce it. We have the ability to bring you in for depositions under oath, bring you back before Congress again. If the information you provide is not complete and is not thorough, you will continue to have your happy train of silence met here with Congress, where the American people require answers, because you served in a public position with public dollars and public obligations, and today we are going to have public questions.

Thank you, Mr. Chairman.

Mr. MCHENRY. I thank the gentleman from Ohio.

Members will have seven days to submit opening statements for the record.

We will now recognize our panel of witnesses today.

The Honorable Christy Romero is the Special Inspector General for the Troubled Asset Relief Program, United States Department of Treasury; Mr. Ron Bloom, Mr. Matthew Feldman, and Mr. Harry Wilson are all former members of the Automotive Task Force at the United States Department of Treasury; Ms. Nikki Clowers is the Director of Financial Markets and Community Investment at the Government Accountability Office. Thank you for your service. Mr. Todd Zywicki is a professor of law at George Mason University School of Law and a senior scholar at the Mercatus Center.

As you all well know, this Committee swears in witnesses before their testimony, so if you would all please rise and raise your right hands, you will be sworn before your testimony. Raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. MCHENRY. You may be seated.

Let the record reflect that the witnesses answered in the affirmative.

You all are well practiced at testifying before Congress. As you well know, we have the light system here. Green means, as we know from traffic schools or, if you have tickets, repeated traffic schools, green means go; yellow means hurry up; and red means stop. You have five minutes to summarize your testimony in order to allow for discussion and questions afterwards.

We will begin with Ms. Christy Romero for five minutes.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE CHRISTY ROMERO

Ms. ROMERO. Chairman McHenry, Ranking Member Quigley, and members of the Committee, I am very honored to appear before you today and very much want to thank you for holding this hearing.

SIGTARP was created to protect the interest of those who funded TARP, and that is the American taxpayers, and an important part of SIGTARP's mission is to bring transparency to decisions that were made by the Government in the wake of the financial crisis. By examining the past, we can take advantage of lessons learned so that we can better protect taxpayers in the future. In addition, taxpayers have an absolute right to know the decisions that went into how TARP dollars were spent.

The Government provided approximately \$80 billion in TARP funds in the auto bailout, and SIGTARP has brought transparency to decisions made by Treasury and the Auto Task Force in the auto bailout. We seek to bring greater transparency to GM's decisions to provide funds to top-up the pensions of certain hourly workers who were at Delphi Corporation, who were formerly employed by GM, and who were represented by one of three unions.

We are conducting an audit review of Treasury's role in that decision and whether the Auto Task Force pressured GM to provide additional funding for those pensions. We have closely coordinated with GAO, who conducted similar, but not duplicative, reviews.

We have experienced significant delay by the refusal to be interviewed by the three former Treasury officials who served on the Auto Team: Mr. Bloom, Mr. Wilson, and Mr. Feldman. The former co-head of the Auto Team, Mr. Rattner, only agreed to be interviewed this May. These individuals were heavily involved in the TARP assistance to GM and GM's restructuring, and have knowledge about the pension issues.

We first requested from Treasury interviews of these former Treasury officials in May 2011. Months later Treasury told us that the individuals would not meet with SIGTARP, while other members of the Auto Team would. We contacted these individuals directly while reviewing documents and interviewing other witnesses. We asked Treasury to speak to these former Treasury officials about the importance of cooperating with SIGTARP. When it became clear that the individuals would not agree to be interviewed, we informed this Committee.

The lack of cooperation by these former Treasury officials has significantly protracted SIGTARP's review. We were forced to look elsewhere for the information. While we continued to request their cooperation, we reviewed more than 100,000 pages of documents, but those documents do not provide a complete picture. We often find in our audits a lack of detailed and complete documentation of decision-making related to TARP. Many discussions and decisions are made in meetings and telephone calls; interviews of government officials are essential to gain a complete picture. Documents such as emails simply do not tell the whole story.

We interviewed others who might have information. We interviewed 43 current and former officials from GM, Delphi, three unions, PBGC, the Auto Team, and DSRA, which represents certain Delphi salaried workers whose pensions GM did not top-up. Information from these witnesses and documents led SIGTARP to determine that Mr. Wilson, Mr. Feldman, and Mr. Bloom were the government officials who were involved in the Delphi pension decision and discussions.

SIGTARP does not have the ability to compel witness testimony. There is no valid reason for these former Treasury officials to refuse to be interviewed. Treasury suggested that SIGTARP's interviews are unnecessary because GAO already determined Treasury's role and because Mr. Wilson and Mr. Feldman were deposed in GM and Delphi's bankruptcies. GAO did not conduct interviews of Treasury's role or whether there was any pressure by the Auto Team, instead deferring to SIGTARP. Also, we have read the depositions and still find it necessary to conduct the interviews.

The refusal by these former Treasury officials to speak to SIGTARP poses a significant obstacle to our ability to complete the audit and to taxpayers gaining a full understanding of the discussions and considerations in GM's decision. Our need to speak with them is significant. That is balanced with the fact that there is no hardship for these individuals to come talk with us. Other important and very busy government officials have been interviewed by SIGTARP, including Secretary Geithner, former Secretary Paulson, Chairman Bernanke, and former Chairman Bair.

Also, and this is very important, it sets a dangerous precedent if former Treasury officials who worked on TARP programs are al-

lowed to evade SIGTARP's oversight and refuse to be interviewed. Such a precedent could potentially impact all of our ongoing and future audits. Most of the government officials who worked on TARP have since left government service.

I want to thank the Committee for always supporting SIGTARP, and I am available to answer any questions that you have.

[Prepared statement of Ms. Romero follows:]



FOR OFFICIAL USE ONLY UNTIL RELEASED BY
THE U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND
BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS

WRITTEN TESTIMONY OF THE HONORABLE CHRISTY ROMERO
SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
(SIGTARP)

BEFORE THE
THE U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND
BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS

July 10, 2012

Chairman McHenry, Ranking Member Quigley, members of the Committee, I want to thank the Committee for its continued support of SIGTARP. I want to thank you for inviting me to testify today regarding TARP investments in the automotive industry and SIGTARP's audit of the decision making relating to General Motors' ("GM")¹ topping-up the pensions of certain hourly employees of Delphi Corporation. Delphi was GM's components manufacturing division that was spun off from GM in 1999 and has since been GM's largest auto parts supplier. I will address today the significant work that SIGTARP has conducted on our audit. I will also address the refusal by three former Treasury officials on the Auto Team to provide information to SIGTARP, which is preventing us from completing our audit. I have included additional background on the auto bailouts, the history of GM's agreements related to Delphi employees' pensions, and the current status of the TARP assistance to the auto industry, which is still very much alive today.

SIGTARP's mission is to serve the interest of all taxpayers who funded TARP through transparency, coordinated oversight, and robust enforcement. Today's hearing involves two of those critical mission areas – transparency and coordinated oversight. SIGTARP provides transparency of the financial crisis and the Government's response to the financial crisis so that we can all learn from lessons of the past in order to better protect taxpayers in the future. Transparency is also important because taxpayers who shouldered the burden and risk of TARP have an absolute right to know how these funds are spent, and the decision making behind TARP spending.

Coordinated oversight is a key component of SIGTARP's mission because the TARP bailout morphed into 13 subprograms of more than \$400 billion spent for banks, the auto industry,

¹ For the purposes of this testimony, prior to July 10, 2009, "GM" refers to General Motors Corporation, the entity that filed bankruptcy. References to "GM" on and after July 10, 2009 refer to General Motors Company, the entity that acquired substantially all of the assets from General Motors Corporation.

housing, securities markets, and AIG. SIGTARP and GAO are in constant communication to closely coordinate our efforts so that we can leverage each other's expertise and resources, cover the full playing field, and avoid unnecessary duplication.

SIGTARP and GAO undertook a closely coordinated review of the events that resulted in GM's decision to top-up the pensions of certain hourly employees but not salaried employees at Delphi. Both groups of employees were previously covered under GM's pension plans when Delphi was a GM subsidiary. SIGTARP initiated its audit after receiving two separate requests from members of the House Committee on Oversight and Government Reform, Congressman Michael R. Turner (R-OH) and former Congressman Christopher J. Lee (R-NY).² Prior to initiating this audit, SIGTARP learned from GAO that it was also reviewing the Pension Benefit Guaranty Corporation's ("PBGC") termination of the Delphi pensions. In order to avoid duplication and ensure a full review, SIGTARP and GAO agreed to split the work, with GAO taking the lead on PBGC's termination of the pensions and related issues, given its historical expertise related to pensions, and SIGTARP taking the lead on Treasury's role in the decision, and whether the Administration or Auto Task Force pressured GM to provide additional funding for the Delphi pensions, given SIGTARP's expertise.

The Presidential Auto Task Force and Treasury's Auto Team

On February 15, 2009, the President convened the Presidential Task Force on the Auto Industry ("Auto Task Force") to deal with the bailouts of GM and Chrysler and named Treasury Secretary Timothy Geithner and National Economic Council Director Lawrence Summers to serve as co-chairs. The President also named several cabinet-level officials from across the Executive

² SIGTARP has also received requests for information on the Delphi pension issue from Senator Debbie Stabenow, Senator Roger Wicker, and Senator Charles Schumer.

Branch to serve as members of the Auto Task Force. While the Auto Task Force was formed to deal with Chrysler and GM, the day-to-day decisions and duties fell to a group of Treasury officials known as the Auto Team. As reported in SIGTARP's audit "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks" ("Dealership Audit"), the Auto Team had the responsibility of evaluating GM and Chrysler's restructuring plans and negotiating the terms of any further assistance.

The Auto Team was headed by Steven Rattner, the co-founder of a private equity firm, and Ron Bloom, former investment banker and the head of collective bargaining for the United Steelworkers Union. Mr. Rattner and Mr. Bloom reported directly to Auto Task Force co-chairs Secretary Geithner and Larry Summers. Mr. Rattner left the team in July 2009, leaving Mr. Bloom as the head of the Auto Team. The Auto Team had a staff of 15 people who were employed by Treasury.

SIGTARP's Process in Conducting its Audit

SIGTARP obtained and analyzed documents from Treasury; PBGC; GM; Delphi; the Delphi Salaried Retirees Association ("DSRA"); the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"); International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IEU"); and the United Steelworkers of America ("USW"). These documents included memorandums, briefing slides, contracts, court documents, correspondence, and other documentation. Additionally, SIGTARP reviewed all relevant email correspondence obtained from Treasury, GM, and Delphi, including both internal and external correspondence.

In order to bring full and complete transparency to the American taxpayers in its audits, testimony by witnesses is absolutely necessary and critical to SIGTARP's review. One common theme that runs through SIGTARP's audits is that there was often a lack of detailed and complete documentation of Government decision-making during the financial crisis and TARP. Documents do not tell the whole story. Many decisions were made through in-person meetings and telephone conversations (often at break-neck speed), necessitating witness testimony on all of the issues considered, the roles of individuals and groups, and the rationale for decision making, among other things. Because TARP spanned two Administrations and because many officials who worked on TARP related issues have since left the Government, interviews of former Treasury or other Government officials becomes critical to gaining a complete picture.

SIGTARP has interviewed 43 current and former officials from GM, Delphi, DSRA, all three unions, PBGC, and Treasury, including Auto Team officials Steven Rattner, Sadiq Malik, and David Markowitz. However, these interviews do not provide a complete picture of the Auto Team's role. Information obtained from witnesses and documents led SIGTARP to determine that other members of the Auto Team including Harry Wilson and Matt Feldman were closely involved in the Delphi pension issues and their testimony to SIGTARP is critical to determine the nature of their involvement. Mr. Bloom's role as the co-head of the Auto Team and, after July 2009, the sole head of the Auto Team, is also critical.

Refusals for interviews

Despite SIGTARP's multiple interview requests, the three former members of the Auto Team who worked for Treasury, Mr. Bloom, Mr. Wilson, and Mr. Feldman, have refused to meet with SIGTARP to provide information and answer questions concerning SIGTARP's audit.

Because each of these individuals is a former Treasury official, SIGTARP first requested interviews through Treasury, and was told that these former Treasury officials would not appear for interviews. SIGTARP then reached out directly to these former Treasury officials on multiple occasions to request interviews. These efforts culminated on April 30, 2012, when SIGTARP's General Counsel sent a letter to each of the three former Treasury officials stating that SIGTARP had contacted them for assistance in our congressionally requested audit and that our understanding was that each was refusing to appear to discuss his role, which SIGTARP would report to Congress. Even then, these former Treasury officials have not appeared for an interview.

There is no valid reason for these former Treasury officials to refuse to be interviewed by SIGTARP. Mr. Bloom, who was previously interviewed by SIGTARP related to our audit on the termination of auto dealerships, has not provided a reason for refusing SIGTARP's interview. Mr. Wilson, in refusing to be interviewed told SIGTARP that he was incredibly busy and would be of no help. Mr. Feldman, through his attorney, has provided a letter to this Committee suggesting that his deposition in Delphi's bankruptcy proceedings should provide a complete understanding of Mr. Feldman's work and erase the need for SIGTARP to speak with him. In that deposition, Feldman stated that he had responsibilities across GM and Delphi and that he had been the "lead person at Treasury on pension issues." As we have told Mr. Feldman's attorney, a prior deposition in a bankruptcy proceeding does not change SIGTARP's need to interview him.³ Given the

³ The presence of a deposition in a bankruptcy is not an excuse to prevent an Inspector General from obtaining information. Mr. Feldman and Mr. Wilson were deposed in the summer of 2009. Mr. Bloom was not deposed. In June 2011, Mr. Bloom testified before Congress about GM, but did not answer any questions related to Delphi pensions, citing a private lawsuit brought against him by the DSRA. Mr. Bloom has since been dismissed as a party to the lawsuit. We have read the depositions and find it necessary to speak to these members of the Auto Team. SIGTARP does not represent the interest of any parties in the bankruptcy and should not be limited in its fact finding to questions asked by those parties. Moreover, certain relevant facts occurred after the depositions.

objectives of SIGTARP’s review, interviewing the “lead person at Treasury on pension issues” would be critical. SIGTARP’s General Counsel has informed me that SIGTARP does not have the ability to compel witness testimony. These individuals’ refusal to speak to SIGTARP poses a significant obstacle to SIGTARP’s ability to complete its audit and to taxpayers gaining a full understanding of the discussions and considerations involved in GM’s decision.

SIGTARP’s Audit is Not Duplicative of GAO’s Audits

GAO has confirmed to SIGTARP that it has not conducted an audit of the issues under SIGTARP’s review. GAO has published two reports related to the Delphi pensions: a timeline of events leading to the hourly pension top-up and a review of the PBGC termination of Delphi’s hourly and salaried pension plans. In its December 2011 report, GAO reported, “Although acknowledging the significant role Treasury played in GM’s restructuring, GM and Treasury officials stated that Treasury’s role was advisory concerning GM’s decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions.” GAO confirmed with SIGTARP that they did not interview the Auto Team on the issues being reviewed by SIGTARP, but rather made the statement about the “advisory role” based on statements made in the bankruptcy depositions and by current Treasury employees who were not involved in GM’s decision on Delphi pensions. GAO’s report footnotes that SIGTARP is reviewing the role of the Treasury and the Auto Task Force.

Background on Delphi Spin-Off

In 1999, Delphi was spun off from GM. Delphi maintained a close relationship with GM and remained a crucial part of GM’s supply chain. Delphi has since been GM’s largest supplier of

automotive systems, components, and parts, and GM has been Delphi's largest customer with annual purchases that ranged from approximately \$6.5 billion to approximately \$10.2 billion between 2005 and 2008.

At the time of the Delphi spin-off, about 95 percent of all Delphi hourly employees were represented by unions, including the UAW, IUE, and USW. UAW was the largest union and represented roughly 72 percent of Delphi's union workforce, followed by the IUE and the USW representing 24 percent and 4 percent, respectively. At the time, Delphi's salaried employees were not represented by a union or organized as a group or association.

When Delphi was spun-off from GM in 1999, GM agreed to guarantee the pension benefits of select Delphi hourly retirees should their pension plans ever be terminated or their benefits capped. Under the 1999 agreements, in the event Delphi ceased to do business or experienced financial distress and terminated or froze its pension plans, GM would provide those UAW, IUE, and USW Delphi retirees who had worked at GM prior to the spin-off with the same pension benefits provided to the unions' GM retirees. Further, any reduction in the benefits GM provided to the unions' GM retirees would reduce GM's obligation to the unions' Delphi retirees. Delphi's salaried retirees and other hourly retirees who had worked at GM prior to the spin-off were not given pension benefit guarantee agreements. The GM agreements with UAW, IUE, and USW Delphi retirees were scheduled to expire in 2007.

In 2005, Delphi filed for bankruptcy, a bankruptcy that would last until October 2009. In 2007, with Delphi still in bankruptcy, GM entered into a memorandum of understanding that extended the unions' pension benefit guarantees. In 2007, GM also agreed, subject to certain conditions, to assume all of Delphi's hourly pension plans in two tranches. In September 2008, in the first tranche, the pensions of about 24 percent of Delphi's hourly plan participants amounting

to \$2.4 billion in pension liability was transferred to GM's hourly pension plan. As a result, those Delphi hourly employees whose pensions were transferred were no longer part of Delphi's hourly pension plan. The second tranche, a liability estimated at \$3.2 to \$3.5 billion, was due to be transferred to GM if Delphi consummated its planned bankruptcy reorganization. However, the reorganization did not occur and, therefore, GM decided not to assume the second tranche. In September 2008, Delphi froze and ceased funding the salaried pension plan and then in November 2008, it froze and ceased funding the hourly pension plan.

Delphi's pension plans were insured by PBGC, a Government-backed pension insurer, which places liens on companies' assets when they do not adequately fund their pension plans. After Delphi's failure to make required minimum pension contributions in 2008, PBGC placed liens on certain Delphi assets. Further, in December 2008, Delphi disclosed that its pension plans may need to be terminated by PBGC.

Background of the Auto Bailout and the Auto Team

In November 2008, the CEOs of the big three U.S. automakers (GM, Ford, and Chrysler) testified before Congress asking the Government on behalf of their respective companies for billions of dollars in taxpayer assistance. Without the assistance, they argued their companies would not be able to remain solvent and continue their operations in the wake of the financial crisis. In testimony before the Senate Banking Committee on November 18, 2008, Rick Wagoner, then-CEO of GM, said that if the domestic auto industry were allowed to fail, "the societal costs would be catastrophic: three million jobs lost within the first year, U.S. personal income reduced by \$150 billion, and a government tax loss of more than \$156 billion over three years... not to mention the broader blow to consumer and business confidence."

On December 18, 2008, Treasury made the decision to make TARP money available to the U.S. auto industry and created TARP's Automotive Industry Financing Program ("AIFP") and two additional TARP programs supporting the auto industry. According to Treasury, it made this decision to use TARP funds for AIFP to "prevent a significant disruption of the American automotive industry, which would pose a systemic risk to financial market stability and have a negative effect on the economy of the United States." Over the next several months and years, Treasury provided a total of \$79.7 billion to bailout GM, Ally Financial (formerly GMAC), Chrysler, and Chrysler Financial.⁴ Of the \$79.7 billion in TARP funds disbursed, GM received \$50.2 billion, Ally received \$17.2 billion, Chrysler received \$10.9 billion, and Chrysler Financial received \$1.5 billion.⁵

Treasury first provided GM with a \$13.4 billion TARP loan in December 2008 under AIFP to help the company continue operating. The loan agreement required GM to submit a restructuring plan for review and approval by the "President's Designee" by February 17, 2009. The loan agreement also required GM to make "Labor Modifications"⁶ to its collective bargaining agreement that were approved by the UAW, which had the effect of incorporating union involvement in GM's restructuring.⁷

On February 15, 2009, the President established the Auto Task Force. Two days later, as SIGTARP reported in its Dealership Audit, GM and Chrysler submitted restructuring plans to the Auto Team that called for a reduction in auto dealerships. GM also stated in its restructuring plan

⁴ While Ford initially sought taxpayer assistance, Ford ultimately did not use any TARP funds when Treasury made funding available.

⁵ Numbers may not total due to rounding.

⁶ Labor Modifications were defined in the loan agreement as reductions in total compensation and changes in work rules to be competitive with Nissan, Toyota, and Honda, and the elimination of compensation or benefits for employees who have been fired or laid-off.

⁷ The loan agreement notes that union approval of the Labor Modifications was required. Only the UAW's approval was required because the UAW was the only union representing active employees at GM in December 2008.

that Delphi's failure to address its underfunded pension plans and raise the financing needed to exit bankruptcy would pose "a significant risk" to GM's restructuring, and that GM had "no obligation to absorb Delphi's salaried pension plan."

As SIGTARP reported in its Dealership Audit, the Auto Team worked with GM and Chrysler to devise and implement a strategy for restructuring and negotiating the terms of any further assistance. Brian Deese, who was Special Assistant to the President for Economic Policy and an assistant to Lawrence Summers, served as a White House liaison to the Auto Team. On March 30, 2009, the Auto Team released its response after reviewing the restructuring plans. The Auto Team rejected both plans noting that GM's proposed pace of closing dealerships was too slow and was an obstacle to its viability. GM was given 60 days to submit a "more aggressive plan." The Auto Team concluded that Chrysler could succeed only if it developed a partnership with another automotive company.

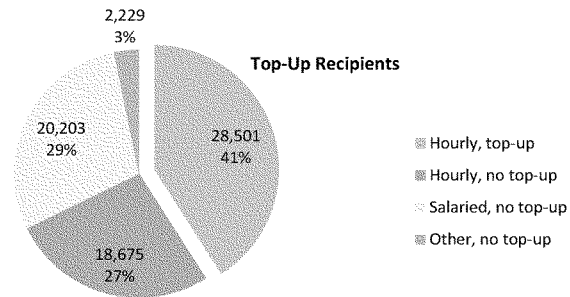
As reported in SIGTARP's Dealership Audit, a Treasury document summarizing TARP's AIFP efforts noted that, although Chrysler and GM were on two different paths, "their best chance of success may well require utilizing the bankruptcy code in a quick and surgical way." According to Treasury, this would not entail liquidation or a conventional bankruptcy. Instead a "structured" bankruptcy would function as a tool "to make it easier for Chrysler and General Motors to clear away old liabilities." In an internal memo, Auto Team officials reiterated that their goal was to take advantage of the bankruptcy code to reject dealership franchise agreements without significant upfront costs. Chrysler filed for bankruptcy on April 30, 2009. GM filed bankruptcy on June 1, 2009. As reported in SIGTARP's Dealership Audit, during bankruptcy, both companies accelerated their dealership termination process.

GM's Top-up of Pensions of Certain Delphi Hourly Retirees

In the month prior to GM filing bankruptcy on June 1, 2009, GM negotiated with the UAW on a new collective bargaining agreement, with some negotiations occurring at Treasury in Washington, D.C. Members of the Auto Team were involved in these discussions. Part of the negotiations between GM and UAW included discussing Delphi pension issues. In July 2009, PBGC terminated Delphi's pension plans, which meant PBGC assumed responsibility for making reduced pension benefit payments to both hourly retirees and salaried retirees. As part of GM's bankruptcy restructuring, GM agreed to assume UAW's Delphi pension benefit guarantee in GM, but not the IUE and USW's guarantees. After GM emerged from bankruptcy and its restructuring was completed in July 2009, the newly emerged GM agreed to reestablish the IUE and USW's Delphi pension benefit guarantees.

Since October 2009, PBGC has paid Delphi's hourly and salaried retirees statutorily defined pension benefit payments that are often lower than retirees' previously promised benefits. Additionally, GM has topped-up the pension payments received by those UAW, IUE, and USW retirees covered by the pension benefit guarantee agreements with supplemental payments, which has increased the payments to their full promised benefit level. According to an analysis completed by GAO, Delphi's pension plan participants total roughly 70,000 individuals, of which 41 percent are covered by a pension top-up. Figure 1 provides a breakdown of the participants according to whether they are covered by GM's top-up.⁸

⁸ The hourly retirees not covered include anyone who never was qualified because they were not members of the unions securing these agreements, were not members of the GM hourly plan prior to the spinoff, or lost their qualifications because they had a break in their employment or otherwise lost their seniority. Individuals who would otherwise be covered, but do not meet the retirement criteria of the plan, will also not receive top-ups. U.S. Government Accountability Office, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," GAO-12-168, 12/15/2011.

Figure 1: Delphi Retirees and Employees Covered by GM Top-Ups, by Plan

Source: PBGC and GM data via GAO

SIGTARP is missing key details regarding GM's decision to top-up certain pensions. Mr. Bloom, Mr. Feldman, and Mr. Wilson played key roles on the Auto Team, particularly with respect to decisions made pertaining to GM. Without their information, SIGTARP does not have sufficient facts to determine their role in the Delphi decision or to make a determination as to whether there was any pressure on GM in that decision.

Current State of TARP's Auto Bailout

During the financial crisis, Treasury, through TARP, provided \$79.7 billion to support automakers and their financing arms in order to "avoid a disorderly bankruptcy of one or more auto [motive] companies." Of the \$79.7 billion in TARP auto funds used, GM received \$50.2 billion (of which \$23.2 billion has been repaid through proceeds from GM's initial public offering, preferred stock redemption and other loan repayments), Ally received \$17.2 billion (of which \$2.7 billion has been repaid), Chrysler received \$10.9 billion (of which \$8 billion has been repaid) and Chrysler Financial received \$1.5 billion (of which \$1.5 billion has been repaid). Treasury has fully

divested itself from Chrysler and Chrysler Financial. Treasury recovered the full \$1.5 billion TARP investment in Chrysler Financial. Treasury suffered a \$2.9 billion loss on its TARP investment in Chrysler. Treasury still owns 32 percent of GM and 74 percent of Ally. That leaves a total of \$44.5 billion in TARP taxpayer auto funds still outstanding which includes the \$2.9 billion loss on Chrysler.

General Motors

Treasury currently holds 32 percent of GM's common stock. Through June 30, 2012, Treasury had provided approximately \$50.2 billion to GM. Of that amount, \$20.1 billion was provided before bankruptcy and \$30.1 billion was provided as financing during bankruptcy. During bankruptcy proceedings, Treasury's loans were converted into common or preferred stock in GM or debt assumed by GM. In addition, Treasury has a claim arising from GM's bankruptcy but does not expect to recover any significant additional proceeds from this claim.

In November and December 2010, GM successfully completed an initial public offering (IPO). As part of the IPO, Treasury sold 412.3 million common shares for \$13.5 billion in net proceeds reducing its number of common shares to 500.1 million and its ownership in GM from 60.8 percent to 33.3 percent. On January 13, 2011, Treasury's ownership in GM was diluted from 33.3 percent to 32 percent as a result of GM contributing 61 million of its common shares to fund GM's hourly and salaried pension plans.

Chrysler

Chrysler is no longer in TARP and taxpayers suffered a \$2.9 billion loss on the TARP investment in Chrysler.

Through October 3, 2010, Chrysler received \$10.9 billion from TARP: \$4.4 billion before bankruptcy to CGI Holding LLC — the parent company of Old Chrysler (the bankrupt entity) —

and Chrysler Financial; \$1.9 billion in financing to Old Chrysler during bankruptcy; and \$4.6 billion to New Chrysler. In consideration for its assistance to Chrysler, Treasury received 9.9 percent of the common equity in New Chrysler.

On April 30, 2010, following the bankruptcy court's approval of the plan of liquidation for Old Chrysler, the \$1.9 billion loan was extinguished without repayment. In return, Treasury retained the right to recover proceeds from the sale of assets that were collateral for the loan from the liquidation of Old Chrysler assets. Of the \$4.4 billion lent to Old Chrysler's parent company, CGI Holding LLC, before bankruptcy, \$500 million of the debt was assumed by New Chrysler while the remaining \$3.9 billion⁹ was held by CGI Holding LLC. On May 14, 2010, Treasury accepted \$1.9 billion in full satisfaction of its \$3.5 billion loan to CGI Holding LLC.

On July 21, 2011, Treasury sold to Fiat for \$500 million Treasury's remaining equity ownership interest in New Chrysler. Treasury also sold to Fiat for \$60 million Treasury's rights to receive proceeds under an agreement with the UAW retiree trust pertaining to the trust's shares in New Chrysler. Treasury also retains the right to recover proceeds from Old Chrysler's bankruptcy, but, according to Treasury, it is unlikely to fully recover its \$1.9 billion loan.

Ally Financial, formerly known as GMAC

Treasury currently holds approximately 74 percent of Ally Financial's common stock and \$5.9 billion worth of mandatorily convertible preferred shares.

On December 29, 2008, Treasury purchased \$5 billion in senior preferred equity from GMAC and received an additional \$250 million in preferred shares through warrants that Treasury exercised immediately at a cost of \$2,500. In January 2009, Treasury loaned GM \$884 million,

⁹ Of this \$3.9 billion, \$0.4 billion were funds received under the Auto Supplier Support Program and the Auto Warranty Commitment Program.

which it invested in GMAC. In May 2009, Treasury exchanged this \$884 million debt for a 35.4 percent common equity ownership in GMAC.

On May 21, 2009, Treasury made an additional investment in GMAC when it purchased \$7.5 billion of mandatorily convertible preferred shares and received warrants that Treasury immediately exercised for an additional \$375 million in mandatorily convertible preferred shares at an additional cost of approximately \$75,000.

On December 30, 2009, Treasury invested another \$3.8 billion in GMAC, and Treasury received \$2.5 billion in trust preferred securities and \$1.3 billion in mandatorily convertible preferred shares. Treasury also received warrants, which were immediately exercised, to purchase an additional \$127 million in trust preferred securities and \$62.5 million in mandatorily convertible preferred shares at an additional cost of approximately \$1,270 and \$12,500, respectively. Additionally, Treasury converted \$3 billion of its mandatorily convertible preferred shares into GMAC common stock, increasing its common equity ownership from 35.4 percent to 56.3 percent.

On December 30, 2010, Treasury announced the conversion of \$5.5 billion of its mandatorily convertible preferred shares in Ally Financial to common equity, increasing Treasury's ownership stake in Ally Financial's common equity from 56.3 percent to 73.8 percent. On March 7, 2011, Treasury sold \$2.7 billion in trust preferred securities in Ally Financial in a public offering, resulting in \$2.7 billion in total proceeds to Treasury.

On March 31, 2011, Ally Financial filed a Form S-1 Registration statement for an initial public offering with the Securities and Exchange Commission ("SEC"). The document includes a prospectus relating to the issuance of Ally Financial common stock. Ally Financial stated that the proposed IPO would consist of "common stock to be sold by the U.S. Department of the

Treasury.” Treasury agreed to be named as a seller but retained the right to decide whether to sell any of its 73.8 percent ownership of Ally Financial’s common stock and in what amounts.

Chrysler Financial

Chrysler Financial is no longer in TARP, having fully repaid the TARP investment. In January 2009, Treasury loaned Chrysler Financial \$1.5 billion under AIFP to support Chrysler Financial’s retail lending. On July 14, 2009, Chrysler Financial fully repaid the loan.

GM and Ally Financial Going Forward

It is unclear how much taxpayers will recover from its TARP investments in GM and Ally Financial. Treasury has not sold any of its GM shares since 2010. In SIGTARP’s April 2012 Quarterly Report, we noted that Treasury will need to sell its approximately 500 million shares in GM at \$53.98 per share to break even. If the \$756.7 million in dividends and interest received by Treasury is included in this computation, then Treasury will need to recover \$26.2 billion in proceeds, which translates into a break-even price of \$52.39 per share, not taking into account other fees or costs associated with selling the shares. Over the past 18 months, GM’s stock has closed at a high of \$38.98 on January 7, 2011, and a low of \$19.05 on December 19, 2011. GM’s stock price last week was selling at \$20.51 on Thursday (July 5, 2012) last week.

Ally has not conducted its IPO despite filing its S-1 Registration statement with the SEC on March 31st of last year. Recently, on May 14, 2012, Ally announced that its mortgage subsidiary, Residential Capital, LLC, and certain of its subsidiaries (“ResCap”) filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. On a Treasury blog posting on May 14, 2012, the day of ResCap’s bankruptcy filing, Treasury Assistant Secretary Tim Massad said that “Ally Financial, Treasury, and many independent analysts believed that it was possible to proceed with an initial public offering of Ally, which would have enabled Treasury to begin exiting its common equity

investment. However, Ally was forced to delay the IPO due to intensifying issues related to ResCap's legacy mortgage liabilities—old loans made during the days before the housing bubble burst—and a general weakening in the IPO market... As with all of our investments, our objective today is to exit in a manner that balances speed of recovery with maximizing returns for taxpayers. We believe that by addressing the legacy mortgage liabilities at ResCap, the action taken today will put taxpayers in a stronger position to maximize the value of their remaining investment in Ally.”

SIGTARP will be monitoring Treasury's progress in the weeks and months ahead. Market conditions have slowed Treasury's progress. In addition, due to the enormity of Treasury's stake, it could take a number of years for Treasury to sell at or above break-even. According to the Congressional Oversight Panel (“COP”), the GM IPO was the largest IPO in U.S. history, and Treasury holds more GM shares than it sold in that IPO. Even if Treasury were able to sell a significant amount of its Ally stock in an IPO, as reported by COP, Treasury expects that it is likely to take one to two years following the IPO to dispose completely of Treasury's ownership stake. Both COP and GAO have suggested that Treasury decide whether it should sell its stock below the break-even price. Although that would result in taxpayers getting out of these investments more quickly, it would decrease taxpayer return. Treasury should develop a concrete exit plan for GM and Ally.

I commend the Chairman, Ranking Member, and members of the Committee for its commitment to transparency on this important issue. I am pleased to answer any questions that you may have.

Mr. MCHENRY. Thank you, Ms. Romero, and thank you for your service to our Government.

Mr. Bloom, you are recognized for five minutes.

STATEMENT OF RON BLOOM

Mr. BLOOM. Mr. Chairman and members of the Committee, good morning. While I am here today at your request in my capacity as a former Treasury official, I left the Treasury Department in February of 2011 and left government service in September of 2011. I am, therefore, not in a position to discuss events since February 2011 or anything concerning possible future actions.

During the period of my government service, I testified regarding the Treasury's automotive investments in front of the Senate Banking Committee on June 10th, 2009; the House Judiciary Commercial and Administrative Law Subcommittee on July 21st, 2009; the Congressional Oversight Panel on July 27th, 2009, and February 25th, 2010; and the House Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending on June 22nd, 2011. In addition, I participated in numerous meetings and discussions, and helped prepare and deliver written and oral responses to countless inquiries of SIGTARP, GAO, Congressional Oversight Panel, and individual elected officials and staff from both the House of Representatives and the Senate.

I understand that the Committee has taken an interest in issues regarding the pensions of certain former employees of the Delphi Corporation. As you may know, I was named as a defendant in a lawsuit in federal court regarding that issue. On September 2nd, 2011, I was dismissed from the case, as was Treasury and the President's Auto Task Force.

When President Obama took office, the American automobile industry was on the verge of collapse. In the year prior, the industry lost over 400,000 jobs and, as 2008 came to a close, both GM and Chrysler were running out of cash and faced the imminent prospects of uncontrolled liquidations. The collapse of the U.S. auto industry posed a substantial risk to financial market stability and the economy as a whole. Therefore, the previous Administration provided \$24.8 billion to the auto industry.

After studying the restructuring plan submitted by GM and Chrysler, President Obama decided that he would not commit any additional taxpayer resources to these companies without fundamental change and accountability. He rejected their initial plans and demanded that they develop more ambitious strategies to reduce cost and increase efficiencies.

However, President Obama also recognized that failing to stand behind these companies would have far-reaching consequences. GM and Chrysler were supported by a vast network of auto suppliers which employed three times as many workers and depended on the automaker's business to survive. An uncontrolled liquidation of a major automaker would have had a cascading effect throughout the supply chain, causing failures and job losses on a much larger scale. Because Ford and other auto companies depended on those same suppliers, the failure of the suppliers could have caused those auto companies to fail as well. Also at risk were the thousands of

auto dealers across the Country, as well as small businesses in communities with concentrations of auto workers.

It was this interdependence that led some experts at the time to estimate that at least one million jobs could have been lost if GM and Chrysler went under. Widely respected economist Mark Zandi recently stated that 2.5 million jobs were at risk. These were grave risks at a time when our economy was losing 750,000 jobs per month; credit markets were still not functioning properly; bank lending had contracted substantially and there was no chance of securing private lending on a scale sufficient to save GM and Chrysler.

To avoid uncontrolled liquidations, the President decided to give GM and Chrysler a chance to show that they could take the tough and painful steps to become viable companies. Working with their stakeholders and the President's Auto Task Force, both GM and Chrysler underwent fair and open bankruptcies. This process required deep and painful sacrifices from all stakeholders, including workers, retirees, suppliers, dealers, creditors, and the countless communities that rely on a vibrant American auto industry. The steps that the President took avoided a catastrophic collapse of the entire auto industry and kept hundreds of thousands of Americans working.

Today the American automobile industry is mounting a comeback. In 2011, GM, Chrysler, and Ford increased their U.S. market share for the second year in a row. Exports of motor vehicles in 2011 increased by 21 percent over 2010. This increase in market share and exports has translated into more American jobs. Since 2009, the auto industry has added over 233,000 jobs, the fastest pace of job growth in the auto industry since 1997. In addition, since 2009, GM and Chrysler have announced investments totaling over \$11.5 billion.

In a better world, the choice to intervene in GM and Chrysler would not have had to be made. But amidst the worst economic crisis in a generation, the Administration's decisions avoided devastating liquidations and provided the American auto industry a new lease on life and a real chance to succeed.

I am prepared to do my best to answer your questions.

[Prepared statement of Mr. Bloom follows:]

Embargoed until delivery

**Written Testimony of Ron Bloom, Former Senior Advisor to the Secretary of the Treasury
Before the House Subcommittee on
TARP, Financial Services and Bailouts of Public and Private Programs
July 10, 2012**

Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee, good morning.

While I am here today, at your request, in my capacity as a former Treasury official, I left the Treasury Department in February of 2011 and left government service in September of 2011. I am therefore not in a position to discuss events since February 2011 or anything concerning possible future actions.

During the period of my government service, I testified regarding the Treasury's automotive investments in front of the Senate Banking Committee on June 10, 2009; the House Judiciary Commercial and Administrative Law Subcommittee on July 21, 2009; the Congressional Oversight Panel on July 27, 2009 and February 25, 2010; and the House Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending on June 22, 2011.

In addition, I participated in numerous meetings and discussions and helped prepare and deliver written and oral responses to countless inquiries of SIGTARP, GAO the Congressional Oversight Panel and individual elected officials and staff from both the House of Representatives and the Senate.

I understand that the Committee has taken an interest in issues regarding the pensions of certain former employees of the Delphi Corporation. As you may know, I was named as a defendant in a lawsuit in federal court in Michigan (*Black et al. v. PBGC et al.*). On September 2, 2011, I was dismissed from the case, as was Treasury and the President's Auto Task Force.

Background on Auto Industry Involvement

When President Obama took office, the American automobile industry was on the brink of collapse. Access to credit for car loans dried up and U.S. auto sales plunged by 40 percent. Auto manufacturers and suppliers dramatically curtailed production. In the year before President Obama took office, the industry shed over 400,000 jobs.¹ As 2008 came to a close, both GM

¹ <http://www.bls.gov/iag/ags/iagauto.htm>. Automotive Industry: Employment, Earnings, and Hours. Bureau of Labor Statistics.

and Chrysler were running out of cash and faced the prospect of uncontrolled liquidations. Amid the worst financial crisis since the Great Depression, credit markets were frozen and no alternative sources of financing were available to GM and Chrysler. In this context, the potential collapse of the U.S. auto industry posed a substantial risk to financial market stability and would have had a negative effect on the economy as a whole. Therefore, the previous Administration provided \$24.8 billion to the auto industry.²

When President Obama took office, we faced a full-fledged recession, our financial system was still exceedingly fragile, and GM and Chrysler were requesting additional assistance. After studying the restructuring plans submitted by GM and Chrysler, President Obama decided that he would not commit any additional taxpayer resources to these companies without fundamental change and accountability. He rejected their initial plans and demanded that they develop more ambitious strategies to reduce costs and increase efficiencies to become more sustainable.

However, President Obama also recognized that failing to stand behind these companies would have consequences that extended far beyond their factories and workers. GM and Chrysler were supported by a vast network of auto suppliers, which employed three times as many workers and depended on the automakers' business to survive. An uncontrolled liquidation of a major automaker would have had a cascading impact throughout the supply chain, causing failures and job loss on a much larger scale. Because Ford and other auto companies depended on those same suppliers, the failure of the suppliers could have caused those auto companies to fail as well.³ Also at risk were the thousands of auto dealers across the country, as well as small businesses in communities with concentrations of auto workers.

It was the interdependence among the automakers, suppliers, dealers, and communities that led some experts at the time to estimate that at least 1 million jobs could have been lost if GM and Chrysler went under.⁴ Other estimates suggested that job losses could have been even higher.⁵

² The previous Administration provided \$13.4 billion to GM, \$4.0 billion to Chrysler, \$5.9 billion to Ally Financial (formerly GMAC), and \$1.5 billion to Chrysler Financial.

³ http://voices.washingtonpost.com/economy-watch/2008/12/fords_mulally_gm_would_drag_en.html. "Ford's Mulally: GM Would Drag Entire Industry Into Bankruptcy." *The Washington Post*. December 3, 2008.

<http://finance.yahoo.com/blogs/daily-ticker/bailouts-gm-chrysler-were-good-ford-too-alan-113859133.html>. "Bailouts of GM, Chrysler Were Good for Ford Too: Alan Mulally." Yahoo! Finance. June 26, 2012.

⁴ http://www.cargroup.org/documents/Detroit_Three_Contraction_Impact.pdf. "The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers." Center for Automotive Research. November 4, 2008.

⁵ http://banking.senate.gov/public/_files/ZandiSenateBankingCommittee120408.pdf. Mark Zandi, "The State of the Domestic Auto Industry: Part II." Testimony before the U.S. Senate Banking Committee. December 4, 2008.

<http://www.epi.org/page/-/pdf/bp227.pdf?nocdn=1>. Robert E. Scott, "When giants fall: Shutdown of one or more U.S. carmakers could eliminate up to 3.3 million U.S. jobs." Economic Policy Institute. December 3, 2008.

These were grave risks at a time when our economy was losing 750,000 jobs per month and our financial system was still at risk. Credit markets were still not functioning properly and bank lending had contracted substantially, and therefore there was no chance of securing private lending on a scale sufficient to save GM and Chrysler. To avoid the liquidation of the companies, the President decided to give GM and Chrysler a chance to show that they could take tough and painful steps to become viable, profitable companies—and to stand behind them if they could. Working with their stakeholders and the President's Auto Task Force, both GM and Chrysler underwent fair and open bankruptcies that resulted in stronger global companies. This process required deep and painful sacrifices from all stakeholders—including workers, retirees, suppliers, dealers, creditors, and the countless communities that rely on a vibrant American auto industry. However, the steps that the President took not only avoided a catastrophic collapse and brought needed stability to the entire auto industry, they also kept hundreds of thousands of Americans working and gave GM and Chrysler a chance to once again become viable, competitive American businesses. And they avoided further shocks to our financial system and economy at a time when we could least afford it.

Auto Industry Recovery

Today, the American auto industry is mounting a comeback. In 2011, the industry reached an important milestone when all three Detroit automakers returned to profitability for the first time since 2004. Ford posted its highest profit since 1999, while GM posted its best annual profit ever in its 103-year history. In addition, GM became the world's best-selling automaker again in 2011, despite shedding four brands in bankruptcy.

This positive financial performance is the result of expanded production and sales. In 2011, GM, Chrysler, and Ford increased their U.S. market share for the second year in a row (from 45.0 percent to 46.9 percent). Before 2010, the last time the Detroit Three gained market share against their foreign competitors was in 1995. In addition, exports of motor vehicles in 2011 increased by 21 percent over 2010.⁶

This increase in market share and exports translates into more American jobs. Since June 2009, the auto industry has added over 233,000 jobs—the fastest pace of job growth in the auto industry since 1997.⁷ In addition, since June 2009, GM and Chrysler have announced investments totaling over \$11.5 billion in their U.S. facilities, creating or saving over 27,000 jobs.

⁶ <http://tse.export.gov/TSE/>. TradeStats Express. Department of Commerce.

⁷ <http://www.bls.gov/iag/tgs/iagauto.htm>. Automotive Industry: Employment, Earnings, and Hours. Bureau of Labor Statistics.

Investments and Repayments

The U.S. Government provided a total of \$80 billion to stabilize the U.S. automotive industry through investments in GM, Chrysler, Chrysler Financial, Ally Financial (formerly GMAC), and programs to support auto suppliers and guarantee warranties. As of today, \$40 billion has been returned to taxpayers. While the Government does not anticipate recovering all of the funds that it invested in the industry, loss estimates from Treasury and the Congressional Budget Office have consistently improved. Independent analysts estimate that the Administration's intervention saved the federal government tens of billions of dollars in direct and indirect costs, including transfer payments like unemployment insurance, foregone tax receipts, and costs to state and local governments.⁸

Treasury committed \$12.5 billion to Chrysler (\$4.0 billion under the Bush Administration and \$8.5 billion under the Obama Administration, including undrawn commitments of \$2.1 billion) and has recouped \$11.2 billion. In May 2011, Chrysler repaid \$5.1 billion in loans six years before their maturity date and terminated its ability to draw on the remaining \$2.1 billion commitment. In June 2011, Fiat agreed to pay Treasury \$500 million for its equity in Chrysler.⁹

Treasury provided \$49.5 billion to GM (\$13.4 billion under the Bush Administration and \$36.1 billion under the Obama Administration), of which \$23.2 billion has been returned to taxpayers. In April 2010, GM repaid its \$6.7 billion loan to Treasury five years before its maturity date. In November 2010, Treasury sold 45 percent of its GM common equity for \$13.5 billion in net proceeds from a highly successful initial public offering (IPO). In December 2010, GM repurchased all \$2.1 billion of Treasury's preferred stock. Treasury currently holds 500.1 million shares or 32 percent of GM's common equity. Following GM's IPO, Treasury has a clear path to exit its remaining investment.

Conclusion

In a better world, the choice to intervene in GM and Chrysler would not have had to be made. But amid the worst economic crisis in a generation, the Administration's decisions avoided devastating liquidations and provided the American auto industry a new lease on life and a real chance to succeed.

I am prepared to do my best to answer your questions.

⁸ <http://www.cargroup.org/pdfs/prnov2010.pdf> and <http://www.cargroup.org/pdfs/bankruptcy.pdf>. "The Impact on the U.S. Economy of the Successful Automaker Bankruptcies." Center for Automotive Research. November 17, 2010.

⁹ Fiat also agreed to pay Treasury \$60 million for its right to proceeds above a certain threshold received by the United Auto Workers retiree healthcare trust (or VEBA). <http://www.treasury.gov/press-center/press-releases/Pages/tg1199.aspx>

Mr. MCHENRY. Mr. Feldman, you are recognized for five minutes.

STATEMENT OF MATTHEW FELDMAN

Mr. FELDMAN. Thank you.

Mr. Chairman and members of the Committee, I understand that I have been requested to appear today before you to discuss my role with the Treasury Department's Auto Team, which I joined in March of 2009 as chief legal advisor and on which I served until August of 2009.

The Treasury Department recruited me to join the Auto Team from my career as an attorney in private practice, where I specialized in reorganizing and restructuring large businesses, not unlike the American automobile manufacturers that were in significant financial distress at that time in 2009.

I believe that the work of the Auto Team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. I am fiercely proud of my service and I am prepared today to assist the Committee in reaching a complete understanding of the Auto Team's work during what was a difficult time and an unprecedented challenge for all involved.

Although it is wonderful to see the dramatic recovery of the automobile manufacturers and the thousands of American jobs that were saved as a result of our work, I am mindful that the restructurings that the Auto Team worked on required many Americans to make great personal sacrifices. As a result of the Delphi Corporation bankruptcy, for example, Delphi and the Pension Benefit Guaranty Corporation were forced to terminate Delphi's pension plans, which means that there are Delphi retirees who, unfortunately, will collect less than their full pension benefits.

Delphi had underfunded its hourly pension plan and, later, its salaried pension plan well prior to filing for bankruptcy protection, a situation that ultimately threatened General Motors' future success as it exited from its own bankruptcy. Because General Motors viewed a well-motivated workforce at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor certain top-up agreements it entered into in 1999 with the United Auto Workers and certain other unions when Delphi was first spun off from General Motors. Sadly, many of Delphi's employees did not have top-up agreements with General Motors, and some of those employees will face a shortfall in their pension payments as the PBGC assumes responsibility for their plans.

The Auto Team agreed that honoring the top-up agreements was a prudent business decision, and we believed that doing so would protect both General Motors and the American taxpayers' collective investment in the company. We supported General Motors' business decision and I remain convinced today that it was the best course of action available at that time.

While I am pleased that General Motors and other American automobile manufacturers have become successful, profitable contributors to our economy, I recognize that the restructuring process imposed painful, but necessary, sacrifices on many of Delphi's stakeholders. As a bankruptcy practitioner and a restructuring spe-

cialist, I have seen similar circumstances all too often. It is, without a doubt, one of the most difficult, disheartening aspects of my job, and I have only the deepest sympathy for everyone affected.

Prior to my invitation to testify here today, I received a request from the Office of the Special Inspector for Troubled Asset Relief Program that I participate in an interview. I attempted to determine what further information SIGTARP believed it required to complete its audit because my memory concerning specific details was considerably better in July 2009, when I gave a lengthy deposition in connection with the Delphi Chapter 11 proceedings that covered many of the topics concerning my role on the Auto Team.

It was my hope that the transcript of that deposition, along with the extensive documentary record SIGTARP has undoubtedly assembled, would be sufficient to meet SIGTARP's needs. After several requests, SIGTARP provided a list of six topics on which it desired further information, but it appears that SIGTARP contacted the Subcommittee before I had an opportunity to respond. In any event, I am here today prepared to answer any questions the Subcommittee has concerning my role on the Auto Team, which I will do to the best of my ability.

[Prepared statement of Mr. Feldman follows:]

STATEMENT OF MATTHEW FELDMAN
TO
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC
AND PRIVATE PROGRAMS
UNITED STATES HOUSE OF REPRESENTATIVES
July 10, 2012

Mr. Chairman and Members of the Subcommittee, I understand that I have been requested to appear before you today to discuss my role with the Treasury Department's Auto Team, which I joined in March 2009 as Chief Legal Advisor and on which I served until August 2009. The Treasury Department recruited me to join the Auto Team from my career as an attorney in private practice, where I specialize in reorganizing and restructuring large businesses not unlike the American automobile manufacturers that were in significant financial distress at that time. I believe that the work of the Auto Team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. I am fiercely proud of my service and I am prepared today to assist the Subcommittee in reaching a complete understanding of the Auto Team's work during what was a difficult time and an unprecedented challenge for all involved.

Although it is wonderful to see the dramatic recovery of the automobile manufacturers, and the thousands of American jobs that were saved as a result of our work, I am mindful that the restructurings that the Auto Team worked on required many Americans to make great personal sacrifices. As a result of the Delphi Corporation bankruptcy, for example, Delphi and the Pension Benefit Guarantee Corporation were forced to terminate Delphi's pension plans, which means there are Delphi retirees who unfortunately will collect less than their full pension benefits. Delphi had underfunded its hourly pension plan, and later its salaried pension plan as

well, prior to filing for bankruptcy protection, a situation that ultimately threatened General Motors' future success as it exited from its own bankruptcy. Because General Motors viewed a well-motivated workforce at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor "top-up" agreements it entered into in 1999 with the United Auto Workers and other unions when Delphi was spun off from General Motors. Sadly, many of Delphi's employees did not have top-up agreements with General Motors, and some of those employees will face a shortfall in their pension payments as the PBGC assumes responsibility for their pension plans.

The Auto Team agreed that honoring the top-up agreements was a prudent business decision, and we believed that doing so would protect both General Motors and the American taxpayers' collective investment in the company. We supported General Motors' decision, and I remain convinced today that it was the best course of action available at the time. While I am pleased that General Motors and other American automobile manufacturers have become successful, profitable contributors to our economy, I recognize that the restructuring process imposed painful but necessary sacrifices on many of Delphi's stakeholders. As a bankruptcy practitioner and restructuring specialist, I have seen similar circumstances all too often; it is without a doubt one of the most difficult, disheartening aspects of my job, and I have only the deepest sympathies for everyone affected.

Prior to my invitation to testify here today, I received a request from the office of the Special Inspector General for the Troubled Asset Relief Program that I participate in an interview. I attempted to determine what further information SIGTARP believed it required to complete its audit because my memory concerning specific details was considerably better in July 2009, when I gave a lengthy deposition in connection with the Delphi chapter 11

proceedings that covered many topics concerning my role on the Auto Team. It was my hope that the transcript of that deposition, along with the extensive documentary record SIGTARP has undoubtedly assembled, would be sufficient to meet SIGTARP's needs. After several requests, SIGTARP provided a list of six topics on which it desired further information, but it appears that SIGTARP contacted the Subcommittee before I had an opportunity to respond. In any event, I am here today prepared to answer any questions the Subcommittee has concerning my role on the Auto Team.

Mr. MCHENRY. Thank you.
Mr. Wilson.

STATEMENT OF HARRY WILSON

Mr. WILSON. Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee, thank you for the opportunity to testify before you today.

I am here to report, at your request, on the Government's efforts in 2009 to avoid a catastrophic collapse of the U.S. automotive industry and specifically regarding its investments in General Motors. My testimony today is in my capacity as a former Treasury official, which I left in early August 2009, so that is the limit of my direct knowledge.

First, some brief background on myself. I have spent the vast majority of my career in the private sector, working at some of the best financial firms in the Country with a focus on fixing troubled businesses. As the late 2008 financial crisis deepened and the Bush, and then Obama, Administrations began to intervene through TARP, I felt it was critical that Treasury officials had the restructuring skills that I had in order to minimize the cost to taxpayers. So although I am a lifelong Republican, due to my desire to serve my Country, I joined the Auto Team in early March 2009 and focused primarily on General Motors. After General Motors exited bankruptcy, I wrapped up my work and left Treasury.

I have continued my turnaround work both in the private sector and the public sector since then. For example, in 2010 I was Republican nominee for New York State comptroller. I ran on a platform of seeking to fix New York State's broken government, and though I lost in a very close race with nearly 2.1 million votes, I was the top Republican vote-getter in New York in 2010.

Shortly after that I founded my firm, The MAEVA Group, LLC, which is focused on fixing problem companies.

Now let me turn to the auto rescue. In late 2008, early 2009, GM and Chrysler were on the verge of collapse due to years of mismanagement and the financial crisis. Unfortunately, the capital markets were in the middle of an unprecedented shutdown, obliterating any possibility of private financing. This lack of private financing and the substantial interdependency of the American automotive industry meant the following: one, that absent tens of billions of dollars, GM and Chrysler would liquidate; two, their liquidation would have meant the failure of many of their suppliers; and, three, the widespread failure of suppliers would have threatened Ford, which is why Ford never opposed our work.

It is only because of this unique confluence of events, this once in a lifetime storm that threatened to destroy an essential American industry that I, a staunch fiscal conservative, reluctantly came to accept that the only alternative, the least bad option, was emergency financial support, the path initiated by the Bush Administration.

The Obama Administration's decision to pursue this work in a commercial manner, as they defined, meant that we would seek the best outcome with the minimum potential cost to the taxpayer.

The results of that work speak for themselves. GM had its most profitable year ever in 2011, even though auto sales have still not

fully recovered to pre-crisis levels; it has grown market share and now has a fortress balance sheet.

Tragically, the human cost to these massive restructurings were significant, and that is the sad part of any restructuring. But absent the Auto Team's work, the human cost and the cost to the American taxpayer would have been far, far greater.

While Treasury was closely involved in pressing GM management for the major changes needed to make the company profitable, we were very careful to never get involved in the specific decisions on plant closures, dealer closures, or the like. We would agree with GM on the broad strokes, which was to create a world-class auto business, and the key components of that, and they would make the detailed decisions that needed to be made to implement those broad strokes.

This approach applied to the same sad story of Delphi. When Delphi came to the Auto Team's attention, Delphi was bleeding approximately \$150 million in cash per month. GM was supporting Delphi because Delphi was the sole supplier for certain critical GM parts, so a Delphi liquidation would have shut down all of General Motors. This was an unsustainable proposition both for GM and for the American taxpayer.

To resolve Delphi's loan bankruptcy, GM management agreed to various measures, including providing capital and honoring the top-up agreements GM had made in 1999. Other commitments, including pensions for salaried employees or other unionized employees not covered by top-up agreements, were not accorded additional consideration.

Consistent with the rest of our work, Treasury provided general input, but not specific decisions to these matters, as was recognized in the GAO finding in December 2011.

So, in closing, the restructuring world is a difficult one, filled with painful choices to minimize the human and financial costs, while maximizing the probability of a company's long-term success. The human costs of the GM rescue were deep, significant, and tragic, and those who have suffered losses of any kind have my deepest sympathies. But as great as those costs were, they paled in comparison to the costs of inaction.

As a fiscal conservative, I wish our work had not been necessary. As an American citizen, I wish that more companies operated with better management so that these tragic situations would not happen as frequently as they do. But amidst the worst financial crisis in the past 75 years, the actions of the Bush and Obama Administrations avoided devastating liquidations and provided the American auto industry a second chance.

And then one last point on testifying. I would disagree with the characterization of my particular willingness to testify. Because I believe as SIGTARP now knows, I have committed to both the Majority staff last Thursday, the Minority staff on Sunday, and through Treasury to SIGTARP officials themselves to testify and would be happy to do so.

With that, I look forward to your questions.

[Prepared statement of Mr. Wilson follows:]

**Written Testimony of Harry Wilson, Former Senior Advisor to the Secretary of the
Treasury
Before the House Subcommittee on TARP, Financial Services and Bailouts of Public and
Private Programs**

July 10, 2012

Chairman McHenry, Ranking Member Quigley and members of the Subcommittee, thank you for the opportunity to testify before you today. I am here to report, at your request, on the government's efforts in 2009 to avoid a catastrophic collapse of the U.S. automotive industry and specifically regarding its investments in General Motors ("GM").

My testimony today is in my capacity as a former Treasury official. I no longer work at Treasury and therefore no longer participate in the oversight of Treasury's automotive investments. Thus, I am not in a position to discuss events since early August 2009 or anything concerning possible future actions.

Background

Let me provide some of my professional background for context. I have spent the vast majority of my career in the private sector, working at some of the best financial firms in the country, with a primary focus on fixing troubled businesses. My interest in such work began early in my career, when I witnessed the catastrophic implications of bad management decisions or strategic missteps on everyday working people. I also saw this in my own life, when my immigrant mother was laid off from her job as a sewing machine operator, causing significant challenges for our working class family. As a result of these experiences, much of my life's work has been dedicated toward fixing problem companies before even greater misfortunes befall their employees and their key stakeholders.

As we entered late 2008 and our nation's financial crisis deepened, I became increasingly concerned about the ability of our nation's government to deal with an unprecedented financial crisis. In particular, as the Bush Administration initiated the first TARP investments, I felt that it was critical that the people making these investments bring deep, private sector restructuring experience to bear in order to minimize losses to U.S. taxpayers.

I wanted to serve my country in this time of great need and, though I am a lifelong Republican, I reached out in early 2009 to offer my services to the Administration and officially joined the team in early March 2009. My role was primarily focused on General Motors and the underlying business diligence for our team's collective efforts. After General Motors completed its bankruptcy process, I wrapped up my work and left the Treasury Department in early August 2009.

Since then, I have sought to continue working to fix underperforming institutions, including those in the public sector. For example, in 2010, I was the Republican, Conservative and

Independence Party nominee for New York State Comptroller and nearly unseated the Democratic incumbent. I ran on a platform of seeking to fix New York State's broken and profligate government. Though I lost, I ultimately ran over 500,000 votes ahead of the top of the top of the ticket and wound up with arguably the best showing for a Republican statewide challenger in New York since George Pataki in 1994.

Shortly after that, I founded my firm, The MAEVA Group, LLC, which is focused on fixing problem companies. I also now serve on a number of corporate boards, including Yahoo!, Visteon, Inc., and YRC Worldwide.

Auto Rescue

I will turn my attention now to the auto rescue. In late 2008 and early 2009, GM and Chrysler were on the verge of collapse. Years of mismanagement had led them to this point. Unfortunately, their near-failure coincided with an unprecedented shutdown in the capital markets, obliterating any possibility of private financing.

This combination of a lack of financing options and the substantial interdependency of the American automotive industry meant the following:

- Absent tens of billions of dollars in financing (available at that time only from the federal government), GM and Chrysler would liquidate;
- Their liquidation would have meant the failure of many of their suppliers, who were dependent, in large part, upon GM and Chrysler business;
- The widespread failure of the supplier base would have threatened Ford and would have risked Ford's liquidation in a matter of months. That is why, even though the federal government worked to rescue two of its biggest competitors, Ford never opposed our work – their leadership understood the risks to their own business of inaction.

Thus, the entire American automotive industry would have been at risk due to the intersection of chronic mismanagement and the worst financial crisis since the Great Depression. It is only because of this unique confluence of events – this once-in-a-lifetime storm -- that I, a staunch fiscal conservative, reluctantly came to accept that the only alternative – the “least bad” option – was emergency financial support, the path initiated by the Bush Administration.

Having swallowed that bitter but necessary pill, the key question became: how to structure the TARP investments in a way that minimized the potential cost to the taxpayer. I was heartened by the Administration's decision that it would act in a commercial manner, as I believed that was the only prospect for a successful rescue. And while I feared the moral hazard risks of any rescue attempt, for the key reasons I mentioned, I was convinced that our efforts were the least bad option.

The results of that work speak for themselves: General Motors had its most profitable year ever in 2011, even though auto sales have still not fully recovered to pre-crisis levels. GM has grown market share for the first time in many years and now has a fortress balance sheet – all a result of the work done in 2009. As a result of this work, the auto industry has proceeded to grow again --

adding over 230,000 jobs through May 2012, the fastest pace of job growth in the auto industry since 1997. Contrast this track record with the many forecasts that estimated the loss of over one million jobs had the restructurings not taken place.

Tragically, the human costs of these massive restructurings were significant, and that is the sad part of any restructuring. But, absent the auto team's work, the human costs, and the costs to the American taxpayer, would have been far, far greater. That is the trade-off that must be made in every restructuring. While Treasury was closely involved in pressing GM management for the major changes needed to make the Company profitable, we were very careful to never get involved in specific decisions on plant closures, dealer closures or the like. We would agree with GM on the broad strokes – creating a world-class auto business and the key components of that - - and they would make the detailed decisions that needed to be made to implement those broad strokes.

The sad story of Delphi falls into this same bucket. At the time that Delphi came to the auto team's attention, Delphi was bleeding cash at the rate of approximately \$150 million per month. Because Delphi was the sole supplier for certain critical GM parts, GM was supporting Delphi in order to keep it from liquidating and thus shutting down GM's operations. This was an unsustainable proposition, both for GM and, more importantly, for the American taxpayer. As part of a broad plan of reorganization to resolve Delphi's four-plus year old bankruptcy, General Motors management agreed to a series of measures, including providing necessary capital for Delphi to restructure and to honor the "top-up" agreements GM had made in 1999. Tragically, in order to effectuate this plan, pensions that were not governed by these contractual agreements, including pensions for salaried employees or other unionized employees, were not accorded additional consideration.

Consistent with the rest of our work, Treasury provided general input but not specific decisions in these matters. As the GAO found in its December 2011 report on the Delphi pension matter that "with regard to GM's decisions regarding the assumption of Delphi's plans and top-up agreements, Treasury played an advisory role only, according to GM and Treasury officials. Similarly, according to PBGC officials, PBGC independently decided to terminate the Delphi plans. The documents we reviewed, including GM and Delphi SEC filings and PBGC internal records, are consistent with these statements."

Closing

The restructuring world is a difficult one. In virtually all restructuring cases, professionals are faced with a series of painful options, brought about typically by years of mismanagement. Once a company enters or approaches a restructuring, the choices to be made center around how to minimize the human and financial cost in the short-term while maximizing the probability of the Company's success, for itself and its remaining stakeholders, in the long-term. That was the position in which GM and Delphi management found themselves in early 2009. The human costs of their rescues were deep, significant and tragic, and those who have suffered losses of one kind or another have my deepest sympathies. But those costs, as great as they were, pale in comparison to the costs of inaction, which was the only choice left at that time. As a fiscal conservative, I wish our work had not been necessary. As an American citizen, I wish that more

companies operated with better management – which is a key focus of my professional work – so that these tragic situations would not happen as frequently as they do. Amid the worst financial crisis in the past 75 years, however, the actions of the Bush and Obama Administrations avoided devastating liquidations and provided the American auto industry a second chance – one that was necessary and that has been well utilized since that time.

Thank you again for the opportunity to testify. I look forward to your questions.

Mr. MCHENRY. We certainly appreciate that willingness that has been just over a year in the making. But we are grateful for it nonetheless, as well as the other two members of the Task Force, even if it is at the eleventh hour. And we are grateful, as I said, for the Ranking Member and his good work and the Minority staff's good work in securing those commitments the day before this important hearing. We are simply just trying—and thank you for submitting that for the record; that is going to be one of my records.

If we could submit for the record whether or not the three members of the Task Force represented today will submit themselves for that interview with SIGTARP. The outline that I have of extensive requests from SIGTARP to you three gentlemen, Mr. Bloom, Mr. Feldman, and Mr. Wilson, is extensive. So pardon me for not relieving you of the burden of testifying before Congress when we get that commitment at 5:46 the day before a 10 a.m. hearing. But I think we are going to continue with this and expect some questions on that, as I am sure you do.

Mr. Wilson, Mr. Feldman, thank you for your willingness to testify on the particular issue of this hearing. And, Mr. Bloom, we will direct some questions to you to see if you will be willing to submit some testimony for that.

With that, Ms. Clowers, from the Government Accountability Office, you are recognized for five minutes.

STATEMENT OF NIKKI CLOWERS

Ms. CLOWERS. Thank you, Chairman McHenry, Ranking Member Quigley, and members of the Subcommittee.

I appreciate your having me here today to speak about the termination of Delphi's pension plans. In my comments today I will discuss two issues: first, the key events leading to the termination of Delphi's pension plans and, two, the role of the Department of Treasury in those events. My comments are based on our recent reports on these issues.

First, the termination of Delphi's pension plans and the provision of retirement benefit supplements, also called top-ups, to some Delphi employees, but not others, culminated from a complex series of events involving Delphi, GM, various unions, Treasury, PBGC that stretched back to 1999. In that year, GM spun off Delphi as an independent company. At that time, GM agreed to provide top-ups to collectively bargain hourly employees, meaning that if something went wrong with these pension plans for these employees after Delphi became a separate company, GM would ensure these employees received their promised benefits.

No such agreement was negotiated for salaried employees. When these agreements were negotiated, Delphi's pension plan for the hourly workers was not fully funded. In contrast, the plan for the salaried workers was fully funded.

Delphi filed for bankruptcy in 2005 and, as part of its initial re-organizational plan made public in 2007, the company planned to maintain its pension plans. But by this time both the salaried and union pension plans were underfunded. As part of Delphi's exit from bankruptcy, GM agreed to take on some liabilities from Delphi's hourly pension plans in two phases. However, by the time GM

declared bankruptcy in June 2009, it had only taken on the first phase of the plan's liabilities.

GM did agree with the UAW, however, as part of its restructuring, that GM would honor the previously negotiated top-ups. Salaried Delphi employees and Delphi employees who belong to other unions were not included in this agreement.

Employees of these other unions, along with Delphi salaried employees, protested this outcome in bankruptcy court. To maintain its supply chain, GM agreed to top-up the pensions of two other unions, as their consent was needed to resolve Delphi's bankruptcy. However, they did not agree to do so for the salaried workers, and this is where the situation stands today.

I would now like to discuss Treasury's role in these events. Treasury's role stemmed from its position as the primary lender to GM in its bankruptcy. As the primary lender, GM played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interest. However, with regard to GM decisions about Delphi pension plans, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment.

Nevertheless, according to the records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential cost of sponsoring the Delphi hourly plan itself upon emerging from bankruptcy. Treasury also agreed with GM's rationale not to assume the Delphi salaried plan since that plan had been fully funded when GM transferred it to Delphi in 1999.

As for the top-ups, Treasury officials said that while Treasury did not explicitly approve or disapprove of GM's agreement to honor previously negotiated top-up agreements with some unions, it agreed with GM's conclusion that it had solid commercial reasons to enter into such agreement. In particular, Treasury stated that its aim was to ensure that new GM would only assume the liabilities of old GM that were commercially necessary, and that due to new GM's continued dependency on the UAW workforce and the workforce of other unions, Treasury officials felt GM had solid commercial reasons to agree to the top-ups for these retirees. Also, Treasury stated that GM was never obligated to provide top-ups to the salaried or other retirees.

In conclusion, Mr. Chairman, when companies go bankrupt and leave their plans with large, unfunded liabilities, some participants will not get their full benefits promised to them by their employer. This, unfortunately, is not unusual. What makes this case more unusual is the series of events that unfolded over the last decade that lead us here today and the number of players, including Delphi, PBGC, the unions, GM and Treasury, and the roles they played.

Mr. Chairman, Mr. Ranking Member, and members of the Subcommittee, this completes my prepared statement. I would be happy to answer any questions that you may have at the appropriate time. My colleague, Charles Jeszeck, is also available to answer any specific questions regarding PBGC.

[Prepared statement of Ms. Clowers follows:]

United States Government Accountability Office

GAO

Testimony before the Subcommittee on
TARP, Financial Services and Bailouts of
Public and Private Programs, Committee
on Oversight and Government Reform,
House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, July 10, 2012

DELPHI BANKRUPTCY

Termination of Delphi Pension Plans

Statement of A. Nicole Clowers, Director
Financial Markets and Community Investment Issues



GAO-12-909T

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of GAO-12-909T, a testimony before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, Committee on Oversight and Government Reform, House of Representatives

Why GAO Prepared This Testimony

The Delphi Corporation was a global supplier of mobile electronics and transportation systems that began as part of GM and was spun off in 1999. Delphi filed for bankruptcy in 2005, and in July 2009, PBGC terminated Delphi's six defined benefit pension plans and assumed trusteeship of the plans. Because of the resulting differences in participant benefits, questions have been raised about how PBGC came to terminate the plans, whether treatment for certain Delphi workers was preferential, and the role of Treasury in these outcomes.

GAO's testimony describes key events related to the termination of Delphi pension plans and the reasons for GM providing retirement benefit supplements to certain Delphi employees, and Treasury's role in those events. The testimony is based on GAO's March and December 2011 reports that examine these and other related issues. In preparing these reports, GAO relied on publicly available documents—such as GM and Delphi bankruptcy filings, Treasury officials' depositions, and company reports to the Securities and Exchange Commission—and on documents received from groups GAO interviewed, including Delphi, GM, the Delphi Salaried Retirees Association, PBGC, and Treasury. GAO also coordinated with the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) because of that office's work on Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan.

View GAO-12-909T. For more information, contact A. Nicole Clowers at (202) 512-8678 or clowersa@gao.gov or Barbara Bovbjerg at (202) 512-7215 or bovjergb@gao.gov.

July 10, 2012

DELPHI BANKRUPTCY

Termination of Delphi Pension Plans

What GAO Found

The termination of the six defined benefit plans the Delphi Corporation (Delphi) sponsored, and the provision of benefit protections to some Delphi employees but not others, culminated from a complex series of events involving Delphi, the General Motors Corporation (GM), various unions, the U.S. Department of the Treasury (Treasury), and the Pension Benefit Guaranty Corporation (PBGC). When Delphi spun off from GM in 1999, three unions secured an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") for their members should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. These three unions were: (1) the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); (2) the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and (3) the United Steelworkers of America (USWA). No other Delphi employees had a similar agreement to receive a top-up, including salaried workers and hourly workers belonging to other unions. Over the course of events that unfolded over the next decade, the agreements with these three unions ultimately were preserved through the resolution of the bankruptcies of both GM and Delphi. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits, and because PBGC must adhere to statutory limits on the benefits it guarantees, many Delphi employees will receive a reduced pension benefit from PBGC compared with the benefits promised by their defined benefit plans. Those Delphi employees receiving the top-ups will have their reduced PBGC benefit supplemented by GM while others will not.

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy. Treasury's effort to restructure GM included helping GM find the best resolution of the Delphi bankruptcy from GM's perspective. This effort was guided by the following principles: preserving GM's supply chain, resolving Delphi's bankruptcy as quickly as possible, and doing so with the least possible amount of investment by GM. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment on decisions about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of taking over sponsorship of the Delphi hourly plan, but that the company had solid commercial reasons to honor previously negotiated top-up agreements with some unions. Nevertheless, Treasury officials said that Treasury did not explicitly approve or disapprove of GM's agreement to honor previously negotiated top-up agreements. PBGC officials stated that PBGC decided to terminate the plans independently of Treasury input.

Mr. Chairman, Ranking Member Quigley, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the termination of Delphi's pension plans. As you know, the Delphi Corporation (Delphi) was a global supplier of mobile electronics and transportation systems that began as part of the General Motors Corporation (GM) and was spun off as an independent company in 1999.¹ Following Delphi's bankruptcy, the Pension Benefit Guaranty Corporation (PBGC), the government corporation that insures private-sector defined benefit (DB) plans, terminated Delphi's six plans in July 2009. The plans were estimated to be underfunded by a combined \$7.2 billion at termination, of which PBGC expects to cover about \$6 billion.² Since the termination, there has been controversy over different pension benefit outcomes for certain unionized and non-unionized Delphi retirees. Further, the involvement of the U.S. Department of the Treasury (Treasury) in the bankruptcy of GM, Delphi's former parent company, raised questions for some about the role that Treasury played in PBGC's decision to terminate Delphi's pension plans, the decisions to provide retirement benefit supplements ("top-ups") to certain Delphi employees, and the resulting outcomes for Delphi plan participants.

My testimony discusses key events related to the termination of Delphi pension plans and the reasons for GM providing retirement benefit supplements to certain Delphi employees, and Treasury's role in those events. My comments are based on our March and December 2011

¹At the time of the spinoff, Delphi established two pension plans, with assets and liabilities transferred from their GM counterparts: the Delphi Hourly-Rate Employees Pension Plan (hourly plan) and the Delphi Retirement Program for Salaried Employees (salaried plan). Delphi acquired four more plans after the spin-off from GM. Before bankruptcy reorganization, GM's legal name was General Motors Corporation. The legal name of the new entity created in the bankruptcy process is General Motors Company (the entity that purchased the operating assets of the pre-reorganization corporation, which we discuss later in this statement). As of October 19, 2009, General Motors Company became General Motors LLC. Throughout this statement, in cases where a distinction is important, we refer to the pre-reorganization corporation as "old GM" and the post-reorganization company as "new GM."

²A DB plan promises a benefit that is generally based on an employee's final pay and years of service. The employer is generally responsible for funding all or most of the benefit, investing and managing plan assets, and bearing the investment risk.

reports that examined these and related issues.³ To construct a timeline of events and identify Treasury's role in those events for our reports, we relied on publicly available documents, such as bankruptcy filings by GM and Delphi, Treasury officials' depositions, company reports to the Securities and Exchange Commission, press releases; and documents received from groups we interviewed, including Delphi, GM, the Delphi Salaried Retirees Association (DSRA), PBGC, and Treasury. We performed the work on which this statement is based from October 2010 to December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We also coordinated with the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) because of that office's work on Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan.

Key Events Leading to the Termination of Delphi's Pension Plans

Three Unions Secured Top-Up Agreements in Negotiations Following Delphi's Spin-Off from GM

As part of Delphi's spin-off from GM in 1999, GM was required to collectively bargain with the unions affected by the spin-off—including the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and the United Steelworkers of America (USWA), as well as other

³See GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, GAO-11-373R (Washington, D.C.: Mar. 30, 2011); and GAO, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits*, GAO-12-168 (Washington, D.C.: Dec. 15, 2011). These products provide additional details on the scope and methodology of this work.

"splinter" unions.⁴ As a result of these negotiations, GM agreed to pay top-ups to "covered employees" with UAW, IUE, or USWA if the Delphi pension plans were terminated or frozen at a later date, covering any difference between the amount PBGC would pay them and the benefit amount promised by the Delphi plans.⁵ Also, on December 22, 1999, Delphi agreed to indemnify GM for all benefits provided by GM under the UAW benefit guarantee.⁶ At the time GM entered into these agreements, Delphi's salaried plan was fully funded while Delphi's hourly plan was not fully funded.⁷

⁴The splinter unions include the International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Michigan Regional Council of Carpenters, Local 687 and Interior Systems, Local 1045; International Brotherhood of Painters and Allied Trades of the United States and Canada, Sign and Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar and Hotel Workers.

⁵Covered employees" were generally defined as those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999.

⁶This indemnification would allow GM to have a claim against Delphi for any expenses incurred by GM for coverage of guaranteed benefits.

⁷According to data provided by Delphi, based on a fair market valuation of plan assets the Delphi salaried plan was 108.8 percent funded as of year-end 1998 and 122.7 percent funded as of year-end 1999 while the Delphi hourly plan was 69.1 percent funded as of year-end 1999. A plan is fully funded if as of a particular date, plan assets equal or exceed the relevant measure of plan obligations. However, for the typical pension plan invested in a mix of stocks and bonds, measures of funded status can be highly volatile, so that a plan that is fully funded on one date could be substantially less than fully funded on a subsequent date.

After Delphi Filed for Bankruptcy, Delphi and GM Agreed to Extend the Top-Up Agreements with the Three Unions

From 2001 to 2005, Delphi suffered large losses, and the company filed for bankruptcy in October 2005. After Delphi filed for bankruptcy, Delphi and GM agreed to extend the top-up agreements with UAW, IUE, and USWA.⁶ The splinter unions negotiated for other benefits at this time, but were not guaranteed top-ups. No other agreements were reached in relation to top-ups for salaried workers.

In September 2007, GM and Delphi entered into a global settlement agreement that included a plan to transfer assets and liabilities from Delphi's hourly pension plan to the GM hourly pension plan, and for Delphi to freeze new accruals to its hourly plan. The agreement did not establish a specific effective date, but listed various conditions that had to be met for it to become effective. Before becoming effective, the agreement was modified in September 2008, based on further negotiations described below.

Under Delphi's initial reorganization plan, the company planned to emerge from bankruptcy without terminating its pension plans. However, in April 2008, the deal with investors that would have made this possible fell through. Five months later, in September 2008, Delphi and GM amended their September 2007 global settlement agreement to specify that GM would take responsibility for approximately \$3.4 billion of net liabilities in Delphi's hourly plan in two phases. In the first phase, GM would assume a portion of Delphi's hourly plan with net liabilities of \$2.1 billion. This transfer took place on September 29, 2008. In the second phase, upon "substantial consummation" of Delphi's reorganization, the remaining assets and liabilities in Delphi's hourly plan would be transferred to GM. No comparable arrangements were made for a transfer of assets and liabilities for Delphi's salaried plan or other smaller

⁶In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU.

plans. In September 2008, Delphi froze its salaried plan and three of its smaller plans, and in November 2008, Delphi froze its hourly plan.⁹

Losses throughout the
Automotive Industry
Pushed Delphi Near
Liquidation and GM to
Seek Assistance from
Treasury

Beginning in the fall of 2008, economic conditions deteriorated throughout the automotive industry. Delphi experienced declining revenues as GM and other manufacturers sharply reduced production in response to rapidly falling sales. According to documents provided by PBGC, when Delphi's financing agreement with its debtor-in-possession (DIP) lenders expired on April 21, 2009, Delphi's operations were threatened by the prospect of imminent liquidation. On April 21, PBGC determined that it would seek termination of the Delphi salaried and hourly pension plans to avoid the losses that would result if the DIP lenders were to foreclose on their collateral and break up Delphi's controlled group. However, at the request of Delphi and the DIP lenders, PBGC agreed not to proceed with the termination in order to allow the parties to continue negotiating. In exchange, the DIP lenders agreed to give PBGC advance notice of any decision to foreclose so that PBGC could commence termination of the Delphi pension plans in time to protect PBGC's claims.

⁹A freeze is an amendment to a DB plan to limit some or all future pension accruals for some or all participants. For more information on types of freezes and their effects, see GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817 (Washington, D.C.: July 21, 2008).

GM's losses in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry Financing Program (AIFP).¹⁰ As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry (Auto Task Force) and its staff (auto team).¹¹ On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the company's assets to a new entity ("new GM").¹² In court documents, a Treasury official stated that Treasury was mandated by the President to act in a "commercially reasonable manner" as it related to GM's restructuring and ensure that the new GM assumed only those liabilities of the old company that were thought to be "commercially necessary" for the new company to operate.¹³ As GM's primary lender, Treasury was

¹⁰In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was originally authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343, div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to \$700 billion in troubled assets. The Helping Families Save Their Homes Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost \$1.3 billion, from \$700 billion to \$698.741 billion. Pub. L. No. 111-22, div. A, § 402(f), 123 Stat. 1632, 1658. Under EESA the appropriate committees of Congress must be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)). The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, (1) reduced Treasury's authority to purchase or insure troubled assets to \$475 billion and (2) prohibited Treasury from using its authority under EESA to incur any additional obligations for a program or initiative unless the program or initiative already had begun before June 25, 2010. Pub. L. No. 111-203, § 1302, 124 Stat. 1376, 2133 (2010).

¹¹Treasury established an internal working group—the auto team—to oversee AIFP and provide analysis in support of the Auto Task Force.

¹²On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or "new GM," and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or "old GM," to be addressed in bankruptcy court. New GM emerged on July 10, 2009.

¹³Deposition of Treasury Official at 185, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009) and Motion of Defendants U.S. Department of the Treasury et al. at 10, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

concerned about GM's overall exposure to risks related to distressed suppliers, including Delphi. Specifically, Treasury was concerned about how GM's Delphi liabilities would fit within the new company's business plan. According to a Treasury official deposition, Treasury's mandate to restructure GM included helping GM determine the "best resolution" of the Delphi bankruptcy from GM's perspective, which was guided by three principles (see table 1). However, according to Treasury's February 2010 court motion, the Auto Task Force did not dictate what should be done with the Delphi pensions.

Table 1: Treasury's Guiding Principles for Resolving GM's Liabilities Related to Delphi

Principle	Treasury rationale
Development of a resolution that guaranteed the "sanctity" of GM's supply chain	Treasury did not want GM's attention, which was focused on its own restructuring, to be diverted to finding suppliers for the products provided by Delphi.
Quick resolution of the Delphi bankruptcy	Treasury wanted Delphi's bankruptcy to conclude sooner rather than later, given that Delphi already had been in bankruptcy for 3 years.
A resolution that required the least possible amount of investment by GM	Because GM already had invested billions of dollars in Delphi during Delphi's bankruptcy process, Treasury believed that GM should not provide additional money to Delphi absent an overall resolution of the Delphi bankruptcy.

Source: Deposition of Treasury Official, No. 04-44481 (RDO) (S.D. N.Y. July 21, 2009).

In May 2009, Treasury had anticipated that Delphi's salaried pensions would be terminated, but that GM would assume additional liabilities for the Delphi hourly plan, as called for in the second phase of the September 2008 agreement. Additionally, on June 1, 2009, Delphi announced that its hourly plan would be "addressed by GM." However, the phase 2 transfer called for Delphi to pay a \$2.055 billion administrative claim to GM, which it could not do. In the Treasury official's deposition, it was noted that shortly after GM's bankruptcy filing, GM notified Treasury that it had not built sufficient funding into its restructuring plan to take on the hourly plan, but that it had built in the assumption that it would provide the top-up for Delphi UAW retirees. The second phase of the transfer of hourly plan liabilities from Delphi to GM was not in GM's reorganization plan and never took place.

GM's Reorganization Maintained Delphi UAW Top-Ups Based on UAW's Continued Relationship with GM

As part of the sale of the assets of old GM to new GM, GM negotiated with UAW—which represented its largest employee group—to modify wages, benefits, and work rules to be more cost competitive. As a result of these negotiations, GM and UAW agreed that new GM would assume all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees who are or were covered by

UAW collective bargaining agreements in its master sale and purchase agreement, which included GM's obligation to provide top-ups to Delphi UAW retirees.¹⁴ No other negotiations took place that resulted in comparable obligations concerning top-ups for members of the two other unions, IUE and USWA (although they had previously secured top-up agreements with GM) or for the splinter unions or the salaried employees who had no previous top-up agreements with GM.

On June 19, 2009, IUE and USWA objected to the proposed sale of GM's assets because retirees of Delphi represented by IUE and USWA would not receive the same benefits as retirees of Delphi represented by UAW.¹⁵ The court overruled these unions' objection to the sale, stating that new GM needed a "properly motivated workforce to enable [new GM] to succeed," requiring it to enter into "satisfactory agreements with the UAW" and was not "similarly motivated in triaging its expenditures to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."¹⁶ Accordingly, the bankruptcy court approved the sale of GM's assets on July 5, 2009, and those assets were conveyed to new GM on July 10, 2009.

Delphi Publicly Stated That It Was Unable to Fund Its Plans and the Plans Were Terminated

On June 1, 2009, Delphi, citing its inability to fund its plans and a lack of feasible alternatives, publicly stated that PBGC "may initiate an involuntary termination" of the Delphi salaried plan. Delphi and GM entered into agreements with PBGC that provided PBGC an unsecured claim in Delphi's bankruptcy and released PBGC's current claims and

¹⁴The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM. In re GMC, 407 B.R. 463, 481 (Bankr. S.D.N.Y. 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC; (2) assumption and assignment of related executory contracts; and (3) entry into UAW retiree settlement agreement).

¹⁵Objection to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k) and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6008, to (i) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (ii) Schedule Sale Approval Hearing. In re General Motors Corporation, No. 09-50026(REG) (Bankr. S.D.N.Y. June 19, 2009).

¹⁶407 B.R. 512.

foreign liens on Delphi's assets on July 21, 2009.¹⁷ On July 22, 2009—12 days after the sale of GM's assets to new GM—PBGC announced the termination of all six of Delphi's qualified DB plans, and on August 10, 2009, PBGC assumed trusteeship of the plans. PBGC determined that the Delphi pension plans were underfunded by \$7 billion when they were terminated. PBGC estimates that it will need to make up about \$6 billion of that shortfall using PBGC funds,¹⁸ leaving plan participants to bear the loss of the \$1 billion difference through reduced benefit amounts provided by PBGC, consistent with statutory limitations.¹⁹

New GM Ultimately
Agreed to Provide Top-Ups
for IUE and USWA to Help
Finalize Delphi's
Bankruptcy

The approval of the sale of old GM did not resolve IUE's and USWA's claims that new GM was required to continue to provide the pension benefit guarantees in accordance with collectively bargained agreements. Both old GM and new GM denied these claims. According to a company filing, new GM maintained that it was not obligated to assume or to continue to abide by old GM's collective bargaining agreements with IUE and USWA, while old GM maintained that it was entitled to cancel or terminate all obligations arising from collective bargaining agreements between old GM and IUE or USWA. In the summer of 2009, IUE and USWA shifted the focus of their objections from the GM bankruptcy settlement to the Delphi bankruptcy settlement. On July 9 and July 15, 2009, IUE and USWA, along with some of the splinter unions, filed

¹⁷PBGC agreed to release its \$196 million of foreign liens (foreign subsidiaries had not filed for bankruptcy) and other termination claims in exchange for a \$3 billion unsecured claim in Delphi's bankruptcy, a \$70 million cash contribution from GM, and 10 percent of the first \$7.2 billion of distributions from Delphi Automotive LLP, the newly created British partnership that purchased most of Delphi's assets.

¹⁸GM also assumed about \$2 billion in net liabilities when it accepted the transfer of about a fourth of Delphi's hourly plan in September 2008. In addition, GM expects to pay an estimated \$1 billion in top-up benefits to Delphi hourly employees.

¹⁹PBGC pays participant benefits only up to certain limits set forth by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1322 and 1322a. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or in full.

objections against Delphi's proposed reorganization plan and sale.²⁰ On July 15, 2009, DSRA filed an objection against Delphi's bankruptcy based on Delphi's modified plan, including the termination of the salaried plan. On July 30, 2009, the Delphi bankruptcy court overruled the IUE, USWA, and DSRA objections and authorized the consummation of Delphi's modified reorganization plan.

While new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees, it did have reason to want to resolve Delphi's bankruptcy, given GM's reliance on Delphi for parts.²¹ Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy.²² According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts

²⁰Preliminary Objection of IUE-CWA to Motion for Order Authorizing and Approving the Equity Purchase and Commitment Agreement Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July 9, 2009) and Joinder of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to Preliminary Objection of IOUE Locals and IBEW and IAM to Debtors' Motion for Order Authorizing and Approving Modified Plan of Reorganization, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July 15, 2009). Objection to Debtors' Proposed Modifications to Debtors' First Amended Plan of Reorganization (As Modified) at 2, No. 05-44481 (RDD) (Bankr. S.D.N.Y. July 15, 2009).

²¹According to a July 2009 declaration of a GM official, since the spin-off from GM, Delphi was GM's largest component parts supplier, accounting for approximately 11.3 percent of GM's North American purchases and 9.6 percent of GM's global purchases in 2008. Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain Assets of Delphi Corp., (II) Related Agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof, at 4, In re General Motors Corp., No. 09-50026 (Bankr. S.D.N.Y. July 8, 2009).

²²Master Disposition Agreement among Delphi Corp.; GM Components Holdings, LLC; Gen. Motors Co.; Motors Liquidation Co.; DIP Holdco3, LLC; and the Other Sellers and Other Buyers Party Hereto at 96 (July 26, 2009).

suppliers.”²³ As a result, new GM continued negotiating with IUE and USWA to resolve their objections against Delphi’s bankruptcy case.

On September 10, 2009, new GM, old GM, IUE, and USWA signed a settlement agreement that, among other things, required new GM to provide top-ups to retirees of Delphi represented by IUE or USWA who were covered by the benefit guarantee agreements that GM had entered with IUE and USWA in 1999.²⁴ As part of the settlement agreement, IUE and USWA agreed to withdraw their objections against Delphi’s bankruptcy, resulting in the completion of Delphi’s reorganization on October 6, 2009, with the sale of its assets. The settlement agreement did not provide top-ups to the splinter unions or to any other non-covered employees, including all members of Delphi’s salaried plan. On September 14, 2009, DSRA filed a complaint against PBGC in U.S. District Court related to the termination of Delphi’s salaried plan.²⁵ DSRA amended its complaint on November 5, 2009, to include new GM,

²³The July 2009 declaration of a GM official stated that Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts that are used in almost every GM product line in North America and identified several ways in which a cessation of parts delivery by Delphi could affect GM, including that (1) most parts that Delphi manufactures for GM are not readily available from an alternate source, and while GM could accelerate efforts to re-source Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be re-sourced and revalidation required would take at least several months to achieve; (2) because GM operates on a just-in-time inventory delivery system, GM plants relying on just-in-time shipments may run out of inventory of such parts and have to shut down within a matter of days, if Delphi ever ceased shipping even a small fraction of production parts to GM; and (3) the shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, significantly decrease GM’s revenues, and increase GM’s costs to expedite resourcing efforts.

²⁴Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

²⁵Complaint for Equitable Relief, No. 2:09-cv-13616 (E.D. Mich. Sept. 14, 2009).

Treasury, and the Auto Task Force as defendants. New GM, Treasury, and the Auto Task Force were later removed as defendants in the case.²⁶

GM's agreements with certain unions give rise to differences in participant benefits. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits in July 2009, and because PBGC must adhere to statutory limits on the amount of benefits it guarantees to individuals, many Delphi retirees will receive less from PBGC than their full benefit promised by Delphi. Based on PBGC's review of cases as of June 2011, when GAO conducted its study, just under half of both the hourly and salaried plan participants had received reductions in their promised benefits due to the application of statutory benefit limits.²⁷ However, the approximately 60 percent of participants in the hourly plan receiving the top-ups are protected from such benefit reductions because GM will supplement their PBGC benefit to replace any benefit loss, while other hourly employees as well as employees in Delphi's salaried plan and the other smaller plans are not protected from such losses.

Treasury Worked with GM to Resolve the Delphi Bankruptcy

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interests. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the Delphi hourly plan.

²⁶Delphi salaried retirees are in litigation against PBGC about termination of Delphi's pension plans. *Black v. Pension Benefit Guar. Corp.*, No. 2:09-cv-13616 (Bankr. E.D. Mich. filed Nov. 5, 2009). The court dismissed the retirees' claims against new GM in March 2010 and against Treasury and Treasury officials in September 2011. *Black v. Pension Benefit Guar. Corp.*, No. 2:09-cv-13616 (E.D. Mich. March 12, 2010) (Order dismissing General Motors LLC). Order Granting Defendant United States Dep't of the Treasury, Presidential Task Force on the Auto Industry, Timothy F. Geithner, Steven L. Rattner, and Ron. A. Bloom's Reviewed Motion to Dismiss, No. 09-13616 (E.D. Mich. Sept. 1, 2011).

²⁷PBGC pays participants' benefits only up to certain limits set forth by the Employee Retirement Income Security Act of 1974 (ERISA) and related regulations. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or in full.

Additionally, PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent from Treasury's input. Treasury officials said that while Treasury did not explicitly approve or disapprove of GM's agreeing to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons to enter into such an agreement.

Decisions Related to Plan Sponsorship

From Treasury's initial discussions with PBGC about Delphi's pensions in April 2009 until after GM's bankruptcy filing on June 1, 2009, Treasury had anticipated that PBGC would terminate Delphi's salaried pension plan but that GM would assume the remaining portion of Delphi's hourly plan, as called for in the second phase of the September 2008 agreement.²⁸ According to a Treasury official's deposition and our interviews with Treasury officials, Treasury agreed with GM's rationale not to assume the now underfunded Delphi salaried plan, because that plan had been fully funded when GM transferred it to Delphi in 1999. However, the Treasury official's deposition indicated that Treasury thought it was reasonable for GM to assume the Delphi hourly plan for UAW-represented workers, because of UAW's continuing role with the new GM and because the hourly plan, which covered both the UAW and other union-represented workers, had not been fully funded at the time the plan was transferred from GM to Delphi in 1999.²⁹

According to our review of the records, Treasury was involved in discussions with PBGC and GM on how to address Delphi's pensions before GM's bankruptcy filing. Specifically, according to a Treasury official's deposition, initial discussions with PBGC, GM, and Treasury in April and May 2009 centered on trying to reach an agreement under which, among other things, the Delphi salaried plan would be terminated and GM would assume the hourly pension plan. According to PBGC officials, discussions in April and May 2009 revolved around how to deal with Delphi's pension plans in light of the collapse of the automotive market, growing concerns about Delphi's imminent liquidation and inability to maintain its pension plans, and GM's own financial difficulties and impending bankruptcy. However, PBGC officials told us that at this

²⁸Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

²⁹According to the deposition, Treasury was not focused on the other unions' plans at this time but was concerned about UAW because of UAW's role for new GM.

time, they had not reached any agreement with GM or Delphi about the future of the Delphi pension plans.

According to court filings, GM officials first informed Treasury on June 3, 2009, (shortly after GM's bankruptcy filing) that they had concerns about taking on the hourly plan and had not built the cost of doing so into their restructuring plan. In June 2009, GM developed and provided Treasury with an assessment of the costs of Delphi's pensions, which explained that the restructuring plan did not assume the transfer of remaining Delphi hourly or salaried plans. The assessment also stated that, subject to certain conditions, GM was obligated to absorb the second transfer of Delphi's hourly plan but did not expect Delphi to meet those conditions.³⁰ GM also noted that it was not obligated to absorb Delphi's salaried plans. After reviewing GM's calculations and engaging in discussions with GM's pension team, Treasury agreed with GM's assessment that taking on the Delphi hourly plan was a "3 billion dollar liability that GM could not afford."³¹ In a legal brief, Treasury asserted that the department did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions.³²

According to PBGC, Treasury did not play an active role in PBGC's decision to terminate the Delphi plans, although by statute the Secretary of the Treasury is one of PBGC's three board members.³³ According to PBGC officials, PBGC's director informed the board of PBGC's decision to seek termination of the Delphi plans, gave the board advance notice of

³⁰The assessment added that since the first transfer in September 2008, the unfunded liability for the remainder of Delphi's hourly plan had increased from \$1.5 billion to approximately \$3.2 to 3.5 billion as of March 31, 2009.

³¹Deposition of Treasury Official, No. 05-44481 (RDD) (S.D. N.Y. July 21, 2009). Upon termination in July 2009, PBGC calculated that the underfunding of the hourly plan totaled \$4.4 billion.

³²Motion of Defendants U.S. Dep't of the Treasury et al. to Dismiss or, in the Alternative, for Summary Judgment at 24, No. 2:09-CV-13616 (E.D. Mich. Feb. 16, 2010).

³³29 U.S.C. § 1302(d). As we reported in GAO-12-168, PBGC's decision to terminate the plans was ultimately precipitated by the apparent lack of a viable sponsor, impending foreclosure on Delphi's assets, and the prospect of increased losses for PBGC and the plans that would occur upon liquidation. Our examination of PBGC termination decisions for nine of its ten largest insurance claims (Delphi's being the tenth) shows the agency making assessments similar to those it made for the Delphi pension plans. See GAO-12-168 for more details on this work.

subsequent implementation of that decision, and routinely kept the board informed of the agency's actions in the Delphi bankruptcy case, consistent with PBGC's practice in other large cases. The law gives the board responsibility to establish and oversee PBGC policies, but according to PBGC, the board decides broad policy issues that may arise from cases without getting involved directly in those cases.³⁴ For their part, Treasury officials acknowledged that the department had multiple roles in this process by virtue of its roles in PBGC oversight and in managing the U.S. investment in new GM, but noted that Treasury does not communicate with PBGC about its GM investment activities.³⁵ Moreover, in response to questions from Congress, the Treasury Secretary stated that Treasury did not make the decision to terminate Delphi's pension plans.³⁶

Decisions Related to Top-Up Agreements

Although GM decided not to assume the second installment of Delphi's hourly plan, GM did decide to honor existing top-up agreements for commercial reasons that Treasury found reasonable. As noted in a Treasury official's deposition, during GM's bankruptcy process, GM was prepared to honor the obligation of providing top-ups to Delphi UAW retirees, while the situation was less clear in relation to comparable agreements with IUE and USWA. GM officials told us that the company agreed to honor the top-up agreement with UAW during its restructuring because of its dependence on the union, whose members made up a substantial part of GM's workforce. As previously noted, GM agreed to provide top-ups to the Delphi UAW retirees as part of GM's master sale and purchase agreement, to which Treasury gave its approval.

According to a Treasury official's deposition, Treasury was kept apprised of GM's ongoing bargaining with IUE and USWA on a variety of issues, including the top-ups.³⁷ According to Treasury officials, Treasury's consent for transactions greater than \$100 million, which had been

³⁴29 U.S.C. § 1302(d) and (f).

³⁵GAO-10-492.

³⁶The Federal Bailout of AIG: Hearing before the H. Comm. on Oversight and Government Reform, 111th Cong. 310 (2010) (answers to questions for the record from Timothy Geithner, Secretary of the Treasury).

³⁷Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

required before GM's bankruptcy, was not required of new GM. Therefore, Treasury's consent was not required when the settlement agreement was signed 2 months after new GM began operations. Negotiations resulted in the September 2009 settlement agreement between new GM, old GM, IUE, and USWA. According to the agreement, the parties entered into it after consideration of the "factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues."³⁸

Although Treasury officials said Treasury did not explicitly approve or disapprove of GM providing top-ups to the Delphi UAW, USWA, and IUE retirees, Treasury subsequently commented on GM's decision. In its legal brief, Treasury stated that GM had solid commercial reasons for providing the top-ups.³⁹ Specifically, Treasury stated that its aim in negotiating the details of GM's reorganization plan was to ensure that new GM would assume only those liabilities of old GM that were "commercially necessary" for new GM to operate. Treasury noted in the brief that because of new GM's dependence on the UAW workforce and the costs, risks, and delays associated with litigating USWA's and IUE's claims related to the Delphi bankruptcy, new GM had solid commercial reasons to agree to provide the top-ups to the Delphi UAW, USWA, and IUE retirees. Additionally, Treasury officials noted that, unlike the hourly plan, the salaried plan was fully funded at the time GM transferred it to Delphi. Also, because GM was never obligated to provide top-ups to the salaried or other retirees not represented by UAW, IUE, and USWA, GM did not have any legal obligation to agree to provide top-ups to these groups.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

³⁸Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

³⁹Motion of Defendants U.S. Dep't of the Treasury et al. at 28, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

**GAO Contact and
Staff
Acknowledgments**

For further information on this testimony or GAO's March and December 2011 reports on the termination of Delphi's pension plans, please contact me at (202) 512-8678 or clowersa@gao.gov, or Barbara Bovbjerg, Managing Director, Education, Workforce, and Income Security Issues at (202) 512-7215 or bovbjergb@gao.gov. Other key contributors to this statement include Mark M. Glickman, Sarah Farkas, Charles Jeszeck, Heather Krause, Raymond Sendejas, Margie Shields, and Craig Winslow. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement.

Mr. MCHENRY. Thank you, and thank you for your testimony. Professor Zywicki, you are recognized for five minutes.

STATEMENT OF TODD ZYWICKI

Mr. ZYWICKI. Thank you, Chairman McHenry, Ranking Member Quigley, members of the Subcommittee.

It is my pleasure to testify today on matters related to the Obama Administration's Automotive Task Force and the refusal of former Automotive Task Force members to cooperate in efforts to understand the Task Force's controversial decision to top-up Delphi Corporation's pension plan for Delphi employees who were members of the United Auto Workers Labor Union.

General Motors' decision to guarantee the obligations of a completely separate company, Delphi, was completely unjustified under current established principles of bankruptcy law, and it increased the cost to the taxpayer bail out the automotive industry by more than \$1 billion, with no reciprocal benefit to General Motors.

I commend this Committee for seeking answers to this unexplained behavior by the Automotive Task Force, and SIGTARP's Christy Romero for insisting on answers to these questions.

Altogether, the Government pumped \$80 billion of TARP funds into the bailouts of General Motors and Chrysler, and related entities, with, as Chairman McHenry suggested, not a shred of statutory basis for allocating funds in that manner. According to the United States Department of Treasury, it is estimated that, at current share prices, the loss to the American taxpayers will be about \$23 billion from this investment in the automotive bailouts.

Now, it would be one thing to lose billions of dollars if it was necessary to facilitate the bankruptcy reorganization of these companies. But according to a recent paper by James Sherk and me, the entire loss to the taxpayers from the automotive bailouts is attributable to the unjustified preferential treatment of the UAW in bankruptcy, to the tune of \$26.5 billion.

To give you a sense of the size of those losses, that is larger than NASA's annual budget; that is larger than the entire foreign aid budget; and that is larger than the annual budget of the State of Missouri. It would be much more accurate to refer to this as a UAW bailout, rather than an automotive bailout.

We have heard a lot of talk about shared sacrifice today, but I think Steven Rattner, the Obama Administration's former car czar, said it best when he said we should have asked the UAW to do more. We did not ask any UAW member to take a cut in their pay.

James Sherk and I document three different ways in which the UAW was given preferential treatment here that resulted in this massive loss to the taxpayers.

First, the UAW VEBAs were given far better treatment as unsecured creditors than any other unsecured creditors in either the General Motors or Chrysler bankruptcy cases.

Second, UAW employees were given preferential treatment as employees. Usually, in bankruptcy cases, when confronted with above-market, uncompetitive wage scale, bankruptcies use to reduce them to competitive levels. What it is going on right now as we see in the airline bankruptcies, for instance, in which bank-

ruptcy has been used to bring airline bankruptcy wage scales to competitive rates.

In General Motors, the UAW did make wage concessions, but on behalf of future hires, not on behalf of any current employees, as Steven Rattner admitted. And very few other concessions were made. As a result, the wages for General Motors, in particular, still remain above that of any foreign transplants and in any other States.

Third brings us to the issue that we are here today, the \$1 billion that was given by General Motors to top-up the pensions of certain Delphi employees, the United Auto Workers, the IUE, and the USWA union members, but not other hourly employees or salaried workers. How can this be?

Delphi was spun off in 1999, a full 10 years before the General Motors bankruptcy. They were a completely separate company. There was no continuing legal obligation for General Motors to pay for the retirement of the employees of a completely separate company. Instead, all we have heard, as far as I can tell, is a farfetched rationalization that we needed to squander \$1 billion for some theoretical fear related to this. It is hard to see any explanation other than political clout.

What I would like to know is whether any rational investor would spend \$1 billion of their own money to pay for the retirement of employees of a completely separate company, or whether they would be only willing to do it with our money, the money of the taxpayers.

And perhaps it was necessary to have a targeted intervention in order to deal with the frozen credit markets at the time. That could be. Firms like this reorganize all the time, and I take any claims like that with a grain of salt. But, by and large, this is a smoke-screen for what we are talking about today.

The question is, today, whether or not it was worth throwing away \$26.5 billion worth of taxpayer dollars purely to preserve the benefits and the wages and everything else of the UAW. Was it worth it to go through bankruptcy and go through a process in which the Indiana Teachers and Police Fighters lost some of their secured bonds in order to enrich the UAW?

I look forward to questions.

[Prepared statement of Mr. Zywicki follows:]



MERCATUS CENTER
George Mason University

Bridging the gap between academic ideas and real-world problems

TESTIMONY

THE ADMINISTRATION'S AUTO BAILOUTS AND THE DELPHI PENSION DECISIONS: WHO PICKED THE WINNERS AND LOSERS?

TODD ZYWICKI

George Mason University Foundation Professor of Law, Mercatus Center Senior Scholar

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs
July 10, 2012

Chairman McHenry, Ranking Member Quigley, and members of the subcommittee: It is my pleasure to testify today on matters related to the Obama administration's Automotive Task Force and to the refusal of former Automotive Task Force members to cooperate in efforts to understand the task force's controversial decision to "top-up" Delphi Corporation's pension plan for Delphi employees who were members of the United Auto Workers (UAW) labor union. General Motor's decision to guarantee the obligations of a separate company—Delphi—was completely unjustified under established principles of bankruptcy law, and it increased the cost of the taxpayer bailout of the automotive industry by more than \$1 billion with no reciprocal benefit to General Motors (GM). I commend this committee for seeking answers to this unexplained behavior by the Automotive Task Force.

The bankruptcy and bailouts of Chrysler and GM were unprecedented in the number of blatant irregularities and in their abuses of the bankruptcy system. For Chrysler, for example, the U.S. government orchestrated a bankruptcy case that ran roughshod over established principles of bankruptcy law to plunder the interests of secured creditors—including most notably the Indiana State Teachers and Police Officers retirement funds—in order to transfer funds to the UAW as an unsecured creditor. Moreover, according to a study by Blaylock, Edwards, and Stanfield, this politically motivated violation of one of the fundamental principles of bankruptcy weakened the enforcement of creditor rights in the economy, leading to an increase in borrowing costs.¹ In addition, rather than permitting a fair and open auction that would have maximized the value of the bankruptcy estate for all creditors, the government imposed extraordinary restraints on the auction process that required competing bidders to prefer the claims of the UAW's Voluntary Employees Beneficiary Associations (VEBAs) and deterred competing bidders.² The bankruptcy cases themselves featured extraordinary levels of politically motivated interventions by politicians seeking to curry favor with constituents rather than to maximize the success of the reorganizations.³

1. See Bradley Blaylock, Alexander Edwards, and Jared Stanfield, "Creditor Rights and Government Intervention," 24th Australasian Finance and Banking Conference 2011 (January 24, 2012), available online at <http://ssrn.com/abstract=1685618> or <http://dx.doi.org/10.2139/ssrn.1685618>.

2. See Mark J. Roe and David Skeel, "Assessing the Chrysler Bankruptcy," 108 *Michigan Law Review* 727 (2010); Barry Adler, "A Reassessment of Bankruptcy Reorganization after Chrysler and General Motors," NYU Law and Economics Research Paper No. 10-04 (Dec. 31, 2009), available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1530011.

3. See Todd J. Zywicki, "The Auto Bailout and the Rule of Law," *National Affairs* 7 (Spring 2011): 66.

For more information or to meet with the scholars, contact
Robin Bowen, (703) 993-8582, rbowen5@gmu.edu
Mercatus Center at George Mason University, 3301 Fairfax Drive, 4th Floor, Arlington, VA 22201

The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

Much of the government's political intervention in the bankruptcy cases appears to have been motivated to benefit the UAW rather than the companies themselves over U.S. taxpayers, who put billions of dollars at risk to fund the bailouts.⁴ The taxpayers spent a total of \$80 billion on Chrysler, GM, and GM's finance arm Ally Financial. A substantial amount of these funds will never be repaid. The government has already written off or realized losses of more than \$7 billion. More losses will be realized as the government sells its remaining stake in GM and Ally Financial. The U.S. Department of the Treasury projects that, at GM's current stock price, taxpayers will lose \$23 billion.⁵ It also estimates that taxpayers will lose \$23 billion from its venture into the auto bailouts.⁶ To get a better sense of the size of those losses to the taxpayer, that amount substantially exceeds NASA's annual budget and the annual budget for all foreign aid programs and is approximately the size of the annual budget of the state of Missouri.

It would be one thing if these huge losses had been necessary to facilitate the bankruptcy reorganization of the auto companies. But, according to a recent paper by James Sherk and me (a copy of which is enclosed with this testimony), the entire loss to the American taxpayer was not necessary to save the U.S. auto industry.⁷ Instead, the entire loss is attributable to preferential treatment provided to the UAW in the bankruptcy cases beyond what they would have received as creditors and employees in a typical bankruptcy case. In total, this transfer from taxpayers to the UAW amounts to approximately \$26.5 billion. Had the UAW been treated the same as other similarly situated parties in these and other bankruptcies, there would have been no loss to the taxpayers.

We document three ways in which the UAW was given unjustifiably preferential treatment in the bankruptcy cases. First, the UAW VEBA⁸ plans, which had unsecured claims in the Chrysler and GM cases, were given far better treatment than other unsecured creditors in those cases. At the time of bankruptcy, GM owed these unsecured creditors \$29.9 billion, for which they received 10 percent of the stock of "new" GM, which went public in November 2010, and warrants to purchase 15 percent more at preferred prices. Yet the VEBA received 17.5 percent of new GM and \$9 billion in preferred stock and debt obligations. Based on GM's current stock price, the VEBA collected assets would be worth \$17.8 billion—that is \$12.2 billion more than if it had been treated like the other unsecured creditors in the case.

The same thing happened at Chrysler, only to a greater degree. Chrysler's junior creditors recovered none of their \$7 billion in claims. In normal bankruptcy proceedings, the UAW would have also collected nothing. Instead, it

4. U.S. Department of the Treasury, "Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2012" (May 10, 2012), available online at <http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/105/Documents/105/April%20Monthly%20Report%20to%20Congress.pdf> (accessed June 5, 2012).

5. *Id.* The Congressional Budget Office (CBO) estimated that the auto bailout will ultimately cost taxpayers about \$20 billion, based on a share price for GM of \$23.35 (price as of November 15, 2011). Any differences in the estimates among the CBO, Treasury, or any figures presented in this testimony or the accompanying report are entirely mathematical: A lower GM share price increases the loss to the taxpayers and reduces the size of the giveaway to the UAW. At all relevant times, however, the size of the transfer to the UAW has exceeded the total loss to the taxpayers. For example, the calculations used in this testimony are based on GM's opening share price on May 1, 2012 and converted to present value terms (see attached report for details). Since May 1, GM's share price has fallen from \$23.04 to \$20.30, increasing the taxpayer losses to \$24.06 billion and reducing the UAW subsidy by about \$350 million.

6. These estimates exclude other indirect losses that increase the cost of the bailouts, such as the unusually preferential tax treatment provided for carryforward of net operating losses in these cases, which allowed GM to carry forward \$45 billion in net operating losses, an asset estimated to be a \$16 billion windfall to GM, which by increasing GM's share price also implicitly increases the size of the transfer from taxpayers to the UAW proportional to the size of their stock holding. See Eric Bennett Rasmusen and Mark J. Roe, "Can the Treasury Exempt Companies It Owns from Taxes? The \$45 Billion General Motors Loss Carryforward Rule," in *Cato Papers on Public Policy* (Jeffrey Miron, ed., Cato Institute, 2011).

7. James Sherk and Todd Zywicki, "Auto Bailout or UAW Bailout? Taxpayer Losses Came from Subsidizing Union Compensation," Heritage Foundation Backgrounder No. 2700 (June 13, 2012), available online at <http://www.heritage.org/research/reports/2012/06/auto-bailout-or-uaw-bailout-taxpayer-losses-came-from-subsidizing-union-compensation>.

8. The VEBA is formally called the UAW Retiree Medical Benefits Trust. Although technically a separate entity, the UAW VEBA exists solely to provide benefits to UAW members, and the terms UAW and UAW VEBA are used interchangeably in this testimony.

walked away owning almost half of new Chrysler and a \$4.6 billion promissory note earning 9 percent interest. Had the stock and note gone to the U.S. Treasury—which actually provided the money—instead of the UAW, Mr. Sherk and I estimated that the bailout would have cost taxpayers \$9.2 billion less.

Second, the political bankruptcy also insulated the UAW from most of the sacrifices that unions usually make in bankruptcy—and at taxpayer expense. Section 1113 of the U.S. Bankruptcy Code enables reorganizing companies to improve their post-bankruptcy competitiveness by renegotiating union contracts to competitive rates. In April of this year, for example, American Airlines proposed using this power to bring down its labor costs to the level of its rivals, just as Delta and United Airlines had in earlier bankruptcy filings.

This did not happen in GM's bankruptcy. The UAW did accept pay cuts—for new hires. But they only made modest concessions for their existing members, such as eliminating the much-maligned Jobs Bank, which paid workers even when they were laid off. As a result, GM still has higher labor costs (\$56 per hour) than any of its competitors. In fact, Steven Rattner, the Obama administration's former "car czar," admitted to the Detroit Economic Club last December, "We should have asked the UAW to do a bit more. We did not ask any UAW member to take a cut in their [sic] pay."⁹

Had bankruptcy brought GM compensation in line with its competitors' (approximately \$47 per hour), we estimate the resulting cost savings would have increased the value of the taxpayers' stake in GM by \$4.1 billion. This would still leave UAW members making 40 percent more than the average American manufacturing worker.

Third, UAW members also received preferences at Delphi, the auto parts manufacturer and former GM subsidiary—one of the matters being investigated today. When GM spun off Delphi, the automaker agreed to supplement Delphi's UAW members' pensions if the company went bankrupt. Delphi did go under, and in 2009 filed to have the Pension Benefit Guarantee Corporation (PBGC) take over its pension plan.

When the PBGC takes over pension benefits, it guarantees them but only to a certain limit. When Delphi filed for bankruptcy the maximum pension benefits were \$54,000 a year for retirees aged 65 and older, with lower benefits for early retirees.¹⁰ About half of Delphi's union and non-union workers faced reductions in their pension benefits.

New GM no longer had an obligation to supplement the Delphi pensions. After all, Delphi was an entirely different and independent company after the spin-off, and any obligations owed to Delphi employees were purely contractual relationships with the employees of an independent company. Thus, the bankruptcy filing eliminated any continuing obligation owed by GM to Delphi's employees. However, new GM's management—while being overseen by the Obama administration—nonetheless agreed to spend \$1 billion to supplement the pensions of Delphi's UAW retirees. Other hourly employees and all employees in Delphi's salaried pension plan were not as fortunate: GM did not supplement their pensions. According to a U.S. Government Accountability Office report, approximately 28,500 employees were covered by the GM give-away to Delphi's UAW employees, and about 41,000 were not.¹¹

Had new GM treated Delphi's UAW and non-union employees equally, the Treasury could have paid \$1 billion less for the GM bailout. Instead, some workers became more equal than others.

9. Alex Nishimoto, "Rattner Says UAW Wages Should Have Been Cut During Bailouts," *Motortrend*, December 16, 2011, available online at <http://wot.motortrend.com/rattner-says-uaw-wages-should-have-been-cut-during-bailouts-147425.html#ixzz1saq52d2e> (accessed May 31, 2012).

10. U.S. Government Accountability Office, "Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," Report to Congressional Requesters, GAO-12-168, December 2011, Table 2, available online at <http://www.gao.gov/assets/590/587045.pdf> (accessed May 31, 2012).

11. *Id.* at Fig. 4.

GM employees who belonged to other unions received particularly harsh treatment. Approximately 2,500 employees at GM's Moraine, Ohio, assembly plant belonged to the International Union of Electrical Workers (IUE). When GM negotiated its 2007 contract with the UAW, it agreed to transfer work from Moraine to UAW facilities. The bankruptcy deal that the Obama administration oversaw barred these laid-off IUE members from transferring to any of the UAW facilities. While GM has rehired many laid-off UAW members, IUE employees have remained on the sidelines.¹²

As noted above, Mr. Sherk and I have determined that, had the UAW been treated according to standard bankruptcy principles, the cost of the automotive bailouts to U.S. taxpayers would have been \$26.5 billion smaller. In light of the Treasury's estimate that the government will lose \$23 billion on this investment, we conclude that the *entire* loss to the taxpayers is the result of preferentially favorable, and completely unjustified, treatment of the UAW in bankruptcy.

Even leaving aside all of the other irregularities of the bankruptcy cases that were taken to advance the interests of UAW members over other claimants in the cases—including *other* retirees such as teachers and police officers who held secured bonds in Chrysler—the government still could have avoided a massive loss of taxpayer funds if it had simply treated the UAW according to standard bankruptcy rules. Of these irregularities, GM's decision to top-off the pensions of Delphi's UAW employees—and only UAW members of Delphi—is among the most inexplicable. I commend this subcommittee for seeking answers to this billion-dollar question.

Thank you for the opportunity to testify today. I look forward to your questions.

12. Sharon Terlep, "UAW Freezes Rival Out of Rebound," *Wall Street Journal*, April 29, 2012, available online at <http://online.wsj.com/article/SB10001424052702304177104577307184099140656.html> (accessed June 5, 2012).

ABOUT THE MERCATUS CENTER AT GEORGE MASON UNIVERSITY

The Mercatus Center at George Mason University is a research, education, and outreach organization that works with scholars, policy experts, and government officials to connect academic learning and real-world practice.

The mission of Mercatus is to promote sound interdisciplinary research and application in the humane sciences that integrates theory and practice to produce solutions that advance in a sustainable way a free, prosperous, and civil society.

ABOUT THE AUTHOR

Todd J. Zywicki is a senior scholar at the Mercatus Center, George Mason University Foundation Professor of Law at George Mason University School of Law, and co-editor of the *Supreme Court Economic Review*. From 2003 to 2004, Professor Zywicki served as the director of the Office of Policy Planning at the Federal Trade Commission. He has also taught at Vanderbilt University Law School, Georgetown University Law Center, Boston College Law School, and Mississippi College School of Law. He is the author of more than 70 articles in leading law reviews and peer-reviewed economics journals.

Mr. MCHENRY. Thank you, and thank you for your testimony.

We have two current federal folks that are in federal service on this panel. I want to thank you for your current service to our Government and to our people.

I want to thank the three previous members that were in government service for your service to our Government and to our people. Public service should be just that.

Now, there are also consequences for the decisions we make, given the public trust, and, in conjunction with that thought, that is what this hearing is about.

I ask unanimous consent that our colleague from Ohio, Mr. Johnson, be allowed to participate in today's hearing. Without objection, that is ordered.

I will recognize myself for five minutes.

For more than a year SIGTARP has been trying to secure interviews to complete their work on this subject matter of the Delphi pension decisions, and I want to ask Mr. Bloom why were you not willing to cooperate.

Mr. BLOOM. I was very involved in personal matters at the time. I spent a long time in government service and I didn't believe I had anything that I could usefully contribute. But as I have said, if it is important to the Committee, I am prepared to sit with them now.

Mr. MCHENRY. Mr. Feldman, same question. Why were you simply not willing to cooperate?

Mr. FELDMAN. In 2009, when I was deposed with respect to these issues, I had felt at that time that I had answered and given all the information that I had available to me. I also, frankly, have left public life and have an active and busy private life, and my response to SIGTARP was I think you have everything I can give you. Having said that, if an interview would be helpful, as I have said to the staffers, I am prepared to cooperate.

Mr. MCHENRY. Well, Mr. Feldman, to that matter, your attorney, Mr. Shatter, was contacted. SIGTARP was actually in New York and was willing to meet with you in August to September of last year, and you wouldn't participate.

Mr. Wilson, same question. Why were you not willing to cooperate?

Mr. WILSON. Mr. Chairman, I will give you the same answer I gave to Treasury at the time they approached me about it, which was I gave a lengthy deposition. I think I sat for 10 or 12 hours of testimony in the summer of 2009 related to the GM bankruptcy, testified on anything under the sun, as you can imagine, during that long period of time.

I had the experience of being interviewed for Mr. Rattner's book on these activities in early or the summer of 2010 and, frankly, I knew then that I could barely recall a lot of the facts from a year before and this was a year later, two years after the fact, and I said to Treasury I don't remember a lot of what we went through; I could refresh my memory, it would take me probably a couple days of reading through public documents to do that, and I am extremely busy, and I don't know how much I can add.

And that was the exact response I gave to Treasury.

Mr. MCHENRY. Gotcha, you're busy. I hear you. Not too busy to meet with Mr. Rattner about his book.

I would be happy to yield to my colleague.

Mr. QUIGLEY. Thank you.

Gentlemen, I respect your service, but let me just say this. The percentage of the American public that thinks that we do the right thing or will do the right thing is in single digits. The real cost of the problems that we faced here, and in my community, of the public's perception of us and the public's perception of corruption is the loss of the ability to lead. The President characterized it as a deficit of trust.

Now, I am not suggesting for a second that you all did anything wrong, but you have to appreciate this lost year, for whatever the personal reasons, whether you are in public service or not, really doesn't matter. It is the perception of how things are done. It is the ability to have transparency to appreciate how you made the decisions.

And if your answers, with all due respect, are I don't remember, I get that, or you just give the best answers you possibly can. But when you do, when you put things off in this manner, you don't help us and you don't help the decisions you made. Frankly, I think we made the right decision, and we are going to discuss that later, about the bailout, because I thought the industry mattered.

But I think the Chairman is correct. This was a mistake. And I appreciate your willingness to testify here and to cooperate and to be interviewed by SIGTARP, but it is hard to add anything to what Ms. Romero said, except for the fact that it isn't that you have done anything wrong, it is that the American public has a right to know how those decisions were made when so much money was being spent, even if they agree with the decisions. So I mean no disrespect. I just wanted to add, to an extent complement what the Chairman was trying to say.

Mr. MCHENRY. I thank the Ranking Member.

So the question I have, Mr. Bloom, is are you willing to submit yourself to an interview with SIGTARP within the next, let's say, two months?

Mr. BLOOM. Yes.

Mr. MCHENRY. Mr. Feldman?

Mr. FELDMAN. Yes.

Mr. MCHENRY. Mr. Wilson?

Mr. WILSON. Yes. I offered up for this afternoon. I haven't gotten a response yet, but I would be happy to do that.

Mr. MCHENRY. Excellent.

Well, Ms. Romero, next time you don't have people willing to sit down with you for an interview, let me know; we will be happy to have a hearing.

Ms. ROMERO. I can't say how grateful I am to the Committee, to the Chairman, to the Ranking Member of the full Committee, Cummings, to Ranking Member Quigley. This is all we wanted.

We also have not reached any conclusion in our audit. How can we reach a conclusion? I can't characterize the role these gentlemen played without giving them an opportunity to speak to that role. This is all we have wanted and I am grateful, very grateful for that.

It also goes beyond just these three witnesses and this audit, as I talked about in my opening statement. It will be a very, very dangerous precedent if former Treasury officials or other government officials who worked on TARP matters and then leave refuse to be interviewed by SIGTARP, that that goes on and it is allowed. So thank you very much.

Mr. MCHENRY. Thank you.

I thank you for your willingness to submit yourself to this. Mr. Rattner, who testified about this matter, the interview took approximately two hours with SIGTARP. I know you have busy lives. I also know this was a very important matter in your life, in both your public service and now in your private sector experience. This is something major for our Nation and I think we need to have an accurate portrayal of what actually happened and why you made the decisions that you made. Books have been written about this. There are going to be generations that talk about this excessive amount of government intervention, whether justified or unjustified, and the results of those bailouts.

I also will submit for the record that currently the GM stock price today is under \$21. At the IPO it was \$33. For the Government to break even, for the taxpayer to break even, that number had to be \$53. With that, we have had \$16 billion in direct losses to the taxpayer based on the bailout of just GM.

I just want to submit that for the record.

I do have other questions, but in the interest of other members' time, we will now recognize Mr. Quigley for five minutes, after which we will recognize Mr. Ross for five minutes. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. I yield to the Ranking Member of the full Committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Mr. Chairman, I want to associate myself with your words and those of Mr. Quigley and Ms. Romero with regard to the necessity and the importance of witnesses cooperating in these investigations. And I want to thank the witnesses for being here and for their service to the Country.

The former members of the Auto Task Force were part of the Obama Administration's successful rescue of the American automotive industry. In December 2008, an analysis by the Economic Policy Institute projected that "the bankruptcy of U.S. automakers and the collapse of the domestic auto assembly industry could eliminate up to 3.3 million U.S. jobs within the next year." The collapse of General Motors alone would lead to an estimated loss of 900,000 jobs. That calamity was averted by the actions of you, our former members of the Government and the Obama Administration's Auto Task Force, and you deserve our thanks and we do appreciate what you have done.

Today's hearing is not focused on these successes, but on why these three individuals have not yet been interviewed by the Special Inspector General for the Troubled Asset Relief Program, which is conducting a review of the Auto Task Force's work, and I am very pleased to know that you all are willing to submit yourself to being interviewed.

I recognize that you all are private citizens now and are under no obligation to speak with the Inspector General, but we support

the Inspector General's Office and want them to complete their work. As I understood it, this was the principal reason we were holding today's hearing.

However, in preparing for the hearing, my staff contacted each of these three former officials and all three of them said what they said today, that they are now willing to be interviewed.

The Chairman has apparently decided to go forward with today's hearing, and that is his right. But, as a result, we do not have the benefit of the Inspector General's final report, which I anxiously look forward to. I think this could have been handled with a few phone calls rather than a hearing, but that is not my call to make.

Mr. Chairman, if you are going to proceed, and I know you are, I ask that you do so on an evenhanded basis. There is another issue almost exactly like this one, in which an inspector general has conducted a review, has sought to interview a former official, and has been refused. Unlike the present case, however, there is substantial evidence of serious abuses, as well as unethical and potentially illegal conduct in that case.

On two occasions I have written to Chairman Issa about findings by the Inspector General of the National Labor Relations Board that a former Board member, Mr. Peter Schaumber, was regularly receiving deliberative, pre-decisional, and inside information from another Board member, Mr. Peter Flynn. The Inspector General warned that Mr. Schaumber had received copies of draft Board decisions and other deliberative information on pending Board actions. Yet, the Inspector General was never able to conduct an interview of Mr. Schaumber, who was a former employee.

It seems to me that the only difference with that case is that it involved a Republican. Mr. Schaumber served as a senior advisor and co-chair of the Labor Policy Advisory Group to presidential candidate Mitt Romney when he was engaged in these activities.

As I stated from the outset, I strongly support our inspectors general and I believe our Committee should help them when they cannot obtain access to information. So, Mr. Chairman, I know how diligent you are, and I would like to ask you now will you support my request for a hearing with Mr. Schaumber to obtain his testimony? Will you join me in requesting that the Committee call him before us, like you called these three gentlemen before us today? And will you commit to conducting the operations of this Committee on an evenhanded basis?

Mr. MCHENRY. Well, Mr. Cummings, I want to thank the Ranking Member. At the beginning of this hearing I went through a significant amount of this time line. I will be happy to look at the letter that you have presented this morning. I recognize that I was not on that exchange. I am not familiar with the subject matter you are bringing up, but I trust the gentleman has a deep and abiding interest in government transparency; he has been diligent in a tough, but fair Ranking Member in my dealings with the gentleman, having served on his subcommittee in my first term in Congress. I thank you for bringing this subject matter up and I will be happy to look at this issue.

Mr. CUMMINGS. May I have another 20 seconds, please?

Mr. MCHENRY. Absolutely.

Mr. CUMMINGS. I just ask unanimous consent that my two previous letters on this topic be entered into the record. We have been asking for this since March, Mr. Chairman, and I see no difference between these cases other than that the gentlemen here today have all agreed to be interviewed by the Inspector General, and Mr. Schaumber has not.

Mr. MCHENRY. Without objection.

Mr. CUMMINGS. I want to thank you for your patience. Thank you.

Mr. MCHENRY. I thank the Ranking Member for bringing that subject matter up.

Ms. Romero, to that end, have you contacted the Committee about this subject matter and this witness?

Ms. ROMERO. As regards to these three witnesses——

Mr. MCHENRY. Oh, it is a different IG. I am sorry.

Ms. ROMERO. Oh.

Mr. MCHENRY. I am sorry, I was just informed of that.

Well, thank you, Mr. Cummings, and we certainly will follow up with you on that. You have my commitment on that.

With that, we will now proceed to Mr. Ross of Florida for five minutes.

Mr. ROSS. Thank you, Mr. Chairman. You are to be commended for holding this hearing.

As a practicing lawyer, I find that justice doesn't always move at the rate we would like it to move, and the collection of facts is absolutely necessary for the rule of law to be applied and justice to prevail.

While we are here on the eleventh hour and now getting cooperation from the witnesses, I am grateful for their cooperation. But, Mr. Feldman, when you say that it should have been done back in July of 2009, when your deposition was taken and you had a better recollection of the events, I also think back to the witnesses that I would have in my cases and am grateful for discovery depositions because it allows for a person, allows for a witness to recollect their thoughts and remember their testimony.

So again I am grateful for you all to agree now, but let me go into some questions.

Mr. Bloom, you indicated in your opening that the bankruptcy proceeding was fair and open. My question to you is was it any different than any other normal bankruptcy proceeding? I mean, was this not one of the most expedited bankruptcy proceedings in the history of the U.S.?

Mr. BLOOM. In my experience, it was faster than average, but there are other 363 sales——

Mr. ROSS. Are you familiar with any other bankruptcies that were expedited in such a summary fashion?

Mr. BLOOM. Well, the sale of the parts of Lehman Brothers to Barclays in the Lehman bankruptcy, that portion of it, which was a 363 sale, which is what this was, was actually done more quickly.

Mr. ROSS. And, Mr. Feldman, are you familiar with, in your experience, any company independent through a bankruptcy proceeding giving \$1 billion to another company, as was done in this particular situation?

Mr. FELDMAN. Certainly, they honored a contract and they made the decision to honor the contract based on their business judgment, and I frankly think you see that all the time in many, many bankruptcies.

Mr. ROSS. Mr. Zywicki, how do you respond to that?

Mr. ZYWICKI. Well, first, I would say I have never seen a bankruptcy like this at all. I have taught bankruptcy for 15 years; I practiced bankruptcy. I have never seen a bankruptcy case in which secured creditors received \$0.29 on the dollar and unsecured creditors received \$0.44 on the dollar, which is what happened here; and, again, some of those secured creditors were other retirees, the Indiana policemen and teachers retirement unions.

I have never seen, under the guise of a 363 sale, what really amounted to or what is effectively a sub rosa plan, which is not just selling the company, but dictating how the assets are going to be distributed. What we also saw in this case was an auction that was anything but a fair auction of the assets; there were strings attached to it that basically required that anybody—

Mr. ROSS. And why was that? Was the UAW that effective?

Mr. ZYWICKI. Well, anybody else who wanted to bid on the company was required to give preferential treatment to the UAW in the same sort of way that the Government did with respect to honoring the VEBAs. Once the company went into bankruptcy, of course, we saw a lot of other shenanigans. But I have never seen any bankruptcy case that resembled this in terms of the impact on the rule of law, the way in which it scrambled around priorities, and the speed at which they essentially sold the company and distributed the assets.

Mr. ROSS. Thank you.

Mr. BLOOM, what role did the Auto Task Force or other administration officials play in the negotiations between GM and the UAW in this bankruptcy?

Mr. BLOOM. I think the role we played in that generally was the same role we played with most of the issues, which is to say that we deferred to General Motors in terms of their business judgment about how to handle a particular matter, and I think the UAW negotiation would fall into that category. But we reviewed that decision to see if we agreed that it was commercially reasonable.

Mr. ROSS. And did the UAW have a great deal of leverage in these negotiations?

Mr. BLOOM. I think it would be fair to say they had a degree of leverage. I wouldn't describe—

Mr. ROSS. Do think they would have derailed the entire deal over the salaries of a few?

Mr. BLOOM. I can't speculate as to what they might have done.

Mr. ROSS. Mr. Feldman, what do you think?

Mr. BLOOM. I think our judgment at the time was that the judgments that GM made were reasonable.

Mr. ROSS. Mr. Feldman, your opinion? The UAW exerted a great deal of leverage in this negotiation?

Mr. FELDMAN. I think everybody in the case who had leverage exerted that leverage. The UAW was really no different than any other participant.

Mr. ROSS. Do you think they would have derailed the negotiations over—

Mr. FELDMAN. I truly don't know. General Motors—

Mr. ROSS. But you would have to speculate. I mean, this is your forte.

Mr. FELDMAN. I don't think speculating is my forte. My forte is how to move companies through Chapter 11, include these two companies, Chrysler and General Motors.

Mr. ROSS. And never on speculation?

Mr. FELDMAN. I try not to.

Mr. ROSS. Thank you.

With regard to the payback, let's say that under the Bush Administration we give GM \$10, under the Obama Administration we give \$20 to GM; GM pays back \$20. In this particular example, it hasn't all been paid back. Was that something that was never intended to come to fruition or was it just that we wanted to make sure that we paid back what was given under the Obama Administration? Mr. Feldman, I will go to you for that.

Mr. FELDMAN. I don't think that was the intention. The intention was to get paid back. Unfortunately, in the case of General Motors, the stock price has not performed as I think people hoped it would. But one of the reasons that General Motors was de-levered to the extent it was de-levered was to hopefully help the stock price.

Mr. ROSS. I see my time has expired, so I will yield back. Thank you.

Mr. MCHENRY. I thank my colleague.

We will now recognize Ms. Speier from California for five minutes.

Ms. SPEIER. Mr. Chairman, thank you.

I want to thank Mr. Feldman, Mr. Wilson, and Mr. Bloom for being here as private citizens today and for recognizing that there is a responsibility as private citizens to support one's Country.

Professor, you referenced shenanigans, which I thought was an interesting term, because I could think of a lot of shenanigans that went on with Wall Street, and particularly Goldman Sachs, among many other. Would you call those shenanigans?

Mr. ZYWICKI. I don't know those in detail. If I looked at it, I would be willing to call them shenanigans, a lot of them. It would be possible. I have not looked at those in as much detail as I have with respect to these auto bankruptcies.

Ms. SPEIER. Well, with Goldman Sachs, they actually created a product for a specific individual who wanted to short them, and then sold those products as if they were good, outstanding products. Those, to me, are—that kind of conduct is shenanigans. I think a company going bankrupt is not necessarily shenanigans, or trying to keep it alive is not necessarily shenanigans.

Let me ask you, Mr. Wilson, as you noted in your testimony, you are a lifelong Republican, and proud of it, I have no doubt, and you were the Republican conservative and Independent party nominee for New York State's comptroller, is that true?

Mr. WILSON. Yes.

Ms. SPEIER. The work you did to rescue the U.S. auto industry was about doing what was best for the Country, was it not?

Mr. WILSON. Yes.

Ms. SPEIER. At any time did you detect that persons on your team were pursuing a political agenda?

Mr. WILSON. No.

Ms. SPEIER. Were you attempting to push a particular political agenda?

Mr. WILSON. Only to save as much taxpayer money as possible.

Ms. SPEIER. Oh, what a novel idea, to save taxpayer money. Is that what you were engaged in doing?

Mr. WILSON. Yes.

Ms. SPEIER. Okay. Is it true that you were working to stave off a potential collapse of a very large and interdependent U.S. automotive industry, and you were deferring to the company's business judgment regarding many of these detailed decisions?

Mr. WILSON. Yes.

Ms. SPEIER. So, as you look back at your time, would you say that you regret having done anything as a member of that Task Force?

Mr. WILSON. I wouldn't say that. I mean, we could always do a better job. You always have second thoughts and wish you did better than anything you do in life, but I certainly feel that we did the best we could given the circumstances and the timing, and I think it was the right thing for the Country.

Ms. SPEIER. So are you proud with what happened?

Mr. WILSON. Yes.

Ms. SPEIER. How about you, Mr. Feldman?

Mr. FELDMAN. I think I said in my opening remarks that I remain fiercely proud. I think what we did was, with a lot of help from a lot of other people in the Government and at the companies, pretty spectacular for these companies, frankly.

Ms. SPEIER. Mr. Bloom?

Mr. BLOOM. I would just echo my former colleagues' comments, and I would emphasize Mr. Feldman's point; there were a lot of people who worked extremely hard on this matter, but I think collectively a very good result was achieved compared to the alternative.

Ms. SPEIER. Now, each of you is going to now provide a deposition to SIGTARP on your activities, and we also have a GAO report that has been completed that suggests that there was nothing underhanded. Have you read the GAO reports? Do you have any comments on that GAO report? Any of you.

Mr. FELDMAN. I have read the GAO report. I suspect my colleagues have as well. I didn't take issue with anything in the GAO report; I thought it was, overall, a very good job.

Ms. SPEIER. Anyone else have any comments? Mr. Bloom?

Mr. BLOOM. I wouldn't disagree.

Ms. SPEIER. All right, I yield back, Mr. Chairman.

Mr. TURNER. [Presiding.] Thank you. I want to thank the Chairman for yielding the gavel to me during this period of asking questions, and I want to thank the Ranking Member, Mr. Quigley.

This is a bipartisan issue. If you noticed, the topic of this hearing is not the auto bailout, the questions of whether or not it should have been doing or shouldn't have been done. The topic is the Delphi pensions, those who did not receive the top-up or their pensions being whole, in fact, had their pensions reduced, and the involve-

ment of the Auto Task Force and these three gentlemen and their refusal to participate in that. The GAO report did not have information for determining their role or their responsibilities.

Mr. Bloom, you have said that you have testified a number of times, but, as you acknowledge in your own testimony, you did not testify concerning this topic because you claim that there was ongoing litigation that would prevent you to stand in front of Congress and tell the truth.

Mr. Feldman, do you have a medical condition that affects your memory?

Mr. FELDMAN. I do not.

Mr. TURNER. Great. Thank you. Because in your testimony you have, like, foreshadowed that you might claim that you don't remember this stuff when you go before SIGTARP or when the other questions are asked of you in this Committee, and I would want to invite you to have a refreshed memory because of two things. One, when we pull up your law firm's advertisement of what you do, not only do they recognize that you have a practice that is complex litigation, clearly, you recall it. But the very first thing it tells is that in March 2009 you were recruited to serve as the chief legal advisor for the strategy to restructure and recapitalize General Motors Corporation. It is the first item. So if your clients can avail themselves of the knowledge you had, we want to also.

Mr. Bloom, you testified before this Committee, on the Regulatory Affairs Subcommittee on June 22nd, 2011. At that hearing I handed you three pages of questions. My staffer, Andy, who is going to hand them to you again, handed them to you at that hearing. Do you recall receiving these questions?

Mr. BLOOM. Yes.

Mr. TURNER. Okay. I asked you if you would answer those questions, and let me refresh your memory as to what you said. Here is the video of you at that hearing.

[Video played.]

Mr. TURNER. Mr. Bloom, your answer to me on June 22nd, 2011, was absolutely. I have not received one answer from you. Why haven't you answered me?

Mr. BLOOM. Subsequent to the time before I had a chance to answer, I left government service.

Mr. TURNER. So your answer changed because you left government service?

Mr. BLOOM. I did not feel it was appropriate that I continue to involve myself in this matter after I left government service.

Mr. TURNER. Well, clearly, this Committee views that otherwise, as do the taxpayers. You had great responsibility, as also your current firm indicates and advertises you as the senior advisor at the U.S. Department of Treasury where he helped lead the restructuring of General Motors. Is your accountability to the taxpayers. Will you commit, as you did in that hearing, to answer these questions now?

Mr. BLOOM. I am here today, and if there are questions I can answer, I will do it.

Mr. TURNER. Will you commit in writing to answer these questions, as you did under oath in that hearing on June 22nd?

Mr. BLOOM. I will answer the questions I can answer today.

Mr. TURNER. So we will just keep you here and I will just orally ask you the questions, with the Chairman's approval, then.

Mr. Feldman, we have a number of your coworkers' emails that also can help you refresh your recollection. When we get to the SIGTARP's reason for wanting to speak to you, Ms. Romero states, SIGTARP believes that the Auto Task Force played a role in the pension decision, and these individuals' failure to speak on this issue poses a significant obstacle.

Mr. Feldman, do you agree that you played a role in the pension decisions?

Mr. FELDMAN. I don't think I agree that I played a role in the pension decisions. I certainly spoke regularly to the PBGC and to General Motors regarding the Delphi pension issues.

Mr. TURNER. Did you ever speak to people at the White House concerning this issue?

Mr. FELDMAN. Brian Deese, who was, at that time, at the White House, was a regular member of our team and the team reported to Larry Summers and Tim Geithner, and obviously Mr. Summers or Dr. Summers was at the White House at that time.

Mr. TURNER. Can you please put up slide 6?

[Slide.]

Mr. TURNER. This is Joseph House of PBGC, his email following his conversation with you, where he says that you reported that you made progress discussing our proposal with a number of key folks at Treasury and at the White House, but he has not yet wrapped up his coordination. This would be the issue of the pensions. PBGC's emails indicating that we have several, including this one, that indicate your role on the Auto Task Force of coordinating the issue of the pensions. Do you disagree with this email?

Mr. FELDMAN. I don't disagree that I was the coordinator or facilitator of those issues. I think that is accurate to say.

Mr. TURNER. What was your role? You just said a minute ago you didn't have one.

Mr. FELDMAN. I think you asked whether I was a decision maker, and I was not a decision maker.

Mr. TURNER. I asked you to describe what your role was. Would you describe that role for us, please?

Mr. FELDMAN. Sure. I was the facilitator, coordinator of issues between General Motors and the PBGC, among other roles, regarding the Delphi pension issues.

Mr. TURNER. And how does that role assist or affect PBGC and its participation in the bankruptcy process and in the decision affecting the pensions?

Mr. FELDMAN. Well, the decision that the PBGC made with respect to the pensions was independent of anything that Treasury or I had to say to the PBGC. The issue vis-a-vis the PBGC and Delphi was what claims the PBGC would have in the Delphi case; what liens they would purport to have over assets of Delphi, particularly the foreign assets of Delphi, and that had a large impact on Delphi's future and obviously on GM's future.

Mr. TURNER. So, Mr. Feldman, you played a role in determining the either claiming or releasing of PBGC liens on General Motors-Delphi assets in the bankruptcy process with respect to these pensions.

Mr. FELDMAN. That is not correct.

Mr. TURNER. That is what I heard you say. Please clarify.

Mr. FELDMAN. Let me be very clear. I urged the PBGC to come to decisions in a rapid manner because it had the potential to hold up General Motors' emergence. But I did not advocate for positions vis-a-vis the PBGC; I played the role of a facilitator or mediator, if you will, between the PBGC and General Motors.

Mr. TURNER. My time has expired.

Mr. Quigley?

Mr. QUIGLEY. Thank you, Mr. Chairman.

Good morning, Ms. Clowers.

Ms. CLOWERS. Good morning.

Mr. QUIGLEY. Your audit tried to identify some of the factors that went into GM's decisions to top-up some pensions and not others. That is correct, right?

Ms. CLOWERS. It did.

Mr. QUIGLEY. Your December 2011 report states, "Treasury deferred to GM's business judgment and Treasury did not explicitly approve or disapprove of GM providing top-ups." So it would appear from your report that the Delphi pension matter was decided by GM without Treasury influence?

Ms. CLOWERS. Yes. We reported that while Treasury played a significant role in resolving the Delphi bankruptcy, as they wanted that resolved as quickly as possible, as new GM emerged from bankruptcy, they played an advisory role with regard to the pension plan issues as laid out in court filings and interviews with GM, PBGC officials, and Treasury officials. I think an example of that is in a court filing that shows that Treasury assumed GM would be honoring the hourly plans, up until it was informed by GM in June that it could no longer do so because of the financial burden.

Mr. QUIGLEY. Okay. And in your mind and in what you wrote, what were the factors driving GM's decisions?

Ms. CLOWERS. According to GM officials that we spoke to and the public records that we reviewed, GM considered the dependency on the UAW for the workforce; they were heavily reliant on the workforce, so, emerging from bankruptcy, they wanted to make sure they had a motivated and intact workforce. They also considered other costs and risk factors, and weighed that against emerging from bankruptcy in terms of what type of costs and risks they wanted to take on.

Mr. QUIGLEY. And did you find any evidence that Delphi's pension decisions were anything other than GM's private business decisions?

Ms. CLOWERS. Again, the court filings, Treasury officials, PBGC officials, GM officials stated that Treasury only played an advisory role. I would note, however, in conducting our work, we coordinated with SIGTARP, and our report focused on a broad range of things, including PBGC issues, the events leading to the termination in Treasury's role. But we did not conduct an investigation, as SIGTARP is doing, and we did not interview the former officials here today.

Mr. QUIGLEY. Is there anything else you want to add related to the GM decision-making process and the questions I have asked?

Ms. CLOWERS. No, sir.

Mr. QUIGLEY. All right. Thank you.

I yield back.

Mr. MCHENRY. [Presiding.] I thank the Ranking Member and certainly appreciate his line of questioning as well.

We will now recognize Mr. Kelly of Pennsylvania for five minutes.

Mr. KELLY. Thank you, Mr. Chairman. Thank you for holding the hearing and allowing me to participate.

I do have a question. Mr. Bloom, I have been with you before at other hearings. When we talk about the boards and we talk about GM making decisions, is the consensus is these are GM board decisions that were made involving the UAW?

Mr. BLOOM. I think it would depend on the decision.

Mr. KELLY. But specifically with this one, when it comes to pensions and picking and choosing who would get bailed out and who would not get bailed out.

Mr. BLOOM. I couldn't say whether General Motors management specifically brought this issue to their board of directors or not; I wouldn't know.

Mr. KELLY. Did you sit on the board of directors of General Motors?

Mr. BLOOM. No.

Mr. KELLY. No. You were part of the Auto Task Force?

Mr. BLOOM. Yes.

Mr. KELLY. Okay. And the board of directors, again, the old GM versus the new GM, because there are two completely different entities there, as we know. A lot of the new General Motors were appointees by the Administration.

So as we move on, let me ask you this, Mr. Wilson, in your testimony, I think this really makes a lot of sense, you talked about what happened with this and you say, on page 2, the results of the work speak for themselves. General Motors had its most profitable year ever in 2011, even though auto sales have still not fully recovered.

I know we talk about the auto industry coming roaring back. Do you know what GM made in 2011?

Mr. WILSON. I think it was just under \$8 billion net income.

Mr. KELLY. How much taxes did they pay?

Mr. WILSON. Well, they had some NOLs from the transaction.

Mr. KELLY. Well, how much did they pay in taxes?

Mr. WILSON. I don't know.

Mr. KELLY. I will tell you what it is. It is zero. Zero.

And maybe, professor, you can tell us why they paid zero taxes on almost \$8 billion in profits.

Mr. ZYWICKI. Sure, yes. This is another anomaly about these cases that are very irregular, which is that the Treasury Department issued essentially a special ruling for TARP recipients that allowed them preferential treatment under the tax code in order to carry forward net operating—

Mr. KELLY. Wait, wait. Can I just say, so preferential treatment? Can we just say on the street we call that picking winners and losers, and who gets to take advantage of things that weren't available to others in bankruptcy?

Mr. ZYWICKI. I think that would be a very accurate description, yes.

Mr. KELLY. So \$7.1 billion. I am a General Motors dealer, by the way, so I am really happy when they make money. But I always like the fact, and the President always talks about the 99 percent and the 1 percent, and how the 1 percent is not paying their fair share. An almost \$8 billion profit and they didn't try to put anything back in? That is offensive to me as a taxpayer.

I know that during the bailout, as a dealer, I didn't get one cent. In fact, I was at risk of losing my dealership, and the answer was, you know what, good luck; you guys can probably make it if you really work hard, we made it. I understand that.

But when we talk about this auto industry roaring back, we are talking about an industry that had 16.5 million sales every year. It fell to 9.5 million sales. So the roaring back comes as a result of the fact that cars, like people, age; cars, like people, can't perform at the same level they had when they were newer. There is a thing called the scrapping rate that is taking place.

So the roaring back really is a result of a diminished market the last three or four years. So, yes, it is going to come roaring back. It is going to come roaring back, but I think right now they are projecting somewhere some people say 13.5 million units a year, some 14.5 million units a year. But I am telling you, from a guy who is actually on the lot, talking to people, what is keeping it from really roaring back is people just aren't sure what the future holds. They are not willing to go into a 48-month or 60-month commitment, not knowing if they are going to have a job in that time period.

So I think it is important that we really take a look at what did happen in the auto industry, and I have to tell you, Mr. Wilson, I know you are a good Republican and I know that you are very heralded for what you do.

Without objection, I would like to enter the testimony from City and State, an article that talked about Harry Wilson tapped by the Teamsters to rescue an ailing trucking company and union jobs.

Mr. KELLY. You do a good job at what you do. I don't think there is any question about that, and I think people in the private sector, it doesn't really matter what political affiliation you have. I mean, I sell cars. The prerequisite is they have to be a Republican to buy a car from me. I just want everybody to come in and avail themselves of the fine products that General Motors builds.

Mr. WILSON. But you are in Florida, not New York.

Mr. KELLY. So you do have close ties and you are going to try and help the trucking association too, because they are also in a very bad shape right now, are they not?

Mr. WILSON. Yes. In that particular deal, sir, we completed that restructuring in July of 2011.

Mr. KELLY. Okay. So they are back on their feet and recovering.

Mr. WILSON. Yes.

Mr. KELLY. But my real question, I guess it comes down to how do we pick those we bail out and those we don't?

Mr. WILSON. As a government or as a private sector?

Mr. KELLY. As a government, knowing that the private sector funds all these decisions that we make.

Mr. WILSON. Sure. Well, philosophically, the way I look at it is it is almost never acceptable for the Government to intervene in the private sector, and I have gotten ribbing from friends of mine with philosophical similarities about why was it okay in 2009. And the only reason I personally concluded it was okay was because we were on the edge of the abyss. No one knew where the bottom was, sir, as you remember. The S&P was at 66.

Mr. KELLY. Let me ask you one thing. So the bailout was to keep General Motors from going bankrupt, right?

Mr. WILSON. No, I think the rescue was done to save the entire American auto industry from going out of business.

Mr. KELLY. All right, all right. So the market would be the market; the industry fairs on its own.

Professor, the length of the GM bankruptcy, how many days?

Mr. ZYWICKI. I don't remember exactly, but it was like 30 to 60 days from beginning to end.

Mr. KELLY. So one of the biggest bankruptcy cases ever is solved in 30 to 60 days?

Mr. ZYWICKI. That is what we are led to believe, yes.

Mr. KELLY. So if we don't use what was ultimately used and we let the—I am sorry, my time is up. I just wanted to see if it had gone through a normal bankruptcy, what would the recovery time have been also. I apologize.

Mr. MCHENRY. The gentleman can answer the question. Then we will move forward.

Mr. ZYWICKI. If it had gone through normal bankruptcy, it would have taken somewhat longer, but it would have been a lot more transparent. We could have a real 363 sale; we could have not shredded the rule of law in terms of priorities and those sorts of things. So it may have taken a little bit longer, but there is no reason why we had to do all the things that we did, all this other stuff in order to fix the auto companies.

Mr. MCHENRY. I thank the gentleman for his testimony.

We will now recognize Mrs. Maloney of New York for five minutes.

Mrs. MALONEY. I want to thank the gentleman and I want to thank all of the panelists for being here.

Actually, I want to thank President Obama for saving the auto industry in America. I, for one, can't imagine an America that doesn't build our own cars. Granted, it is not where it was, but we saved at least a million jobs, and we are now exporting cars and we seem to be doing a good job. We have to remember, when President Obama took office, the industry was shedding jobs by hundreds of thousands, and GM and Chrysler faced the possibility of being totally liquidated, which would then have huge ramifications.

Even in New York we had suppliers in New York that were supplying the auto industry, and they went out of business and many New Yorkers lost their jobs. We weren't building the cars, but we weren't building some of the parts. So it had ramifications across our great Nation.

Yet, when the American auto industry was on the brink of collapse and we were going to lose, by all estimates, from all economists, at least a million jobs on the line, that would have been at least one in eight jobs in Ohio and in jobs across our Country. And

it wasn't just the people in the auto plants. We have to remember this. This industry affected everyone. It affected the suppliers hundreds of thousands of miles away and up and down the chain. It affected the restaurants near the plant; every store, every school, everyone in the community, the families that depended on the worker that was at that plant.

I remember some people said let Detroit go bankrupt, let it go down the drain. Even a guy running for president said that. But our President said, no, we are going to save the auto industry and, quite frankly, I am proud of the auto industry. I am proud of their comeback and I think it is an American success story that America bet on the American worker and bet on American industry. And GM is back. Now it is the number one company in the world. Ford is on the move, was handled extremely well during that whole crisis. They did extremely well. Chrysler is back.

I think supporting with policies the American worker and American business, I think it is a success story. So I want to applaud everyone on the panel or everyone who played any role whatsoever in saving an American industry which is now exporting cars.

Now, I would like to point out and put in the record the GAO highlights first page, and I want to quote from it because there is some confusion about Treasury's role, and I am going to quote exactly from their report. "Although acknowledging the significant role Treasury played in GM's restructuring, GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities, but to honor the top-up agreements with some unions." Also, PBGC officials stated that PBGC independently made the decision to terminate the plans.

So I would like to put that in the record because it clarifies the independent voice of GAO.

Mr. MCHENRY. Without objection.

Mrs. MALONEY. I know that we have a representative here and we have some questions for Ms. Clowers, but I first want to ask Mr. Bloom, Mr. Feldman, and Mr. Wilson, and I want to thank them, first, for testifying. They are out there, aren't they? I don't have my glasses, so I can't see. I regret I was at a hearing in Financial Services that I had to attend and I didn't hear all of it, but I read your testimony.

I want to know what was your overall mission as members of the Auto Task Force? Delphi was just one piece of the situation that you were facing and Delphi was a major parts suppliers to GM that had been experiencing its own financial troubles for some time. If you saved GM, but Delphi failed, all of your efforts would have been for nothing, is that correct? Your answer?

Mr. BLOOM. I think I would echo what Mr. Wilson had said earlier. Our mission was not to save General Motors; our mission was to see if there were a way to facilitate the restructuring of these companies so that the American automobile industry in its entirety could continue to function at the least possible cost to the taxpayer. It was General Motors' judgment, which we did not disagree with, that if Delphi had liquidated, General Motors' ability to reorganize would have been put seriously at risk.

Mrs. MALONEY. Well, my time is up and I think that says it all, so I think your judgment was right. We are employing, it saved over a million jobs, we are exporting. I would call that an American success story. Congratulations for any role you did to support it.

Mr. MCHENRY. The gentlelady's time has expired.

Mr. Guinta, the Vice Chair, is recognized for five minutes.

Mr. GUINTA. Thank you, Mr. Chairman. I want to make a statement and a comment, then I want to yield some additional time to Mr. Kelly.

What I am hearing from this testimony is that had this action not taken place, that America would be forever changed; that the Federal Government had no choice but to act. There are a lot of people in this Country that disagree with that assessment. There are a lot of people in this Country that disagree with that assessment. There are a lot of people in this Country who believe in America; that a Federal Government should be limited and effective and efficient. I happen to be one of those Americans and I find it somewhat offensive that people in this Committee, in this panel feel that only the Federal Government could act to save the private sector.

Now, we talk about the size and scope of General Motors. Fannie Mae is actually larger than General Motors. So under the auspice of the Federal Government had to act to save this industry, apparently you are also suggesting and admitting that we are going to have to act to save Fannie Mae. I am not sure that people in this Country believe in that either.

There is one question I have for Mr. Wilson. Did unions get special treatment in this bailout, yes or no?

Mr. WILSON. No.

Mr. GUINTA. In your opinion.

Mr. WILSON. No.

Mr. GUINTA. Okay.

Mr. Zywicki, in your opinion, did unions get special treatment in this bailout?

Mr. ZYWICKI. Yes, absolutely.

Mr. GUINTA. Okay. Why do you think that?

Mr. ZYWICKI. As we document in our paper, first, they were treated better with respect to their VEBAs in the General Motors cases than other unsecured creditors were treated; second, they were treated much better than employees typically are treated in bankruptcy cases, and they were allowed to retain wages that, frankly, are above market wages, above any of their competitors' wages, and were thereby prevented from having to do what typically happens; and, third, there was really no justification for giving \$1 billion to the retirees of another company, which is what they did with respect to Delphi.

Mr. GUINTA. So, Mr. Wilson, is Mr. Zywicki telling the truth or is he lying?

Mr. WILSON. I don't think he is lying; he is just mistaken, and woefully so.

Mr. GUINTA. So you don't think what he said actually happened?

Mr. WILSON. I think he has the facts completely wrong, and I would be happy to go through in detail why.

Mr. GUINTA. Okay, explain to me in 15 seconds how he is wrong.

Mr. WILSON. Well, there is no way to explain \$26 billion of mischaracterization in 15 seconds. I would be happy to explain it—

Mr. GUINTA. Twenty-six billion dollars?

Mr. WILSON. That was his claim.

Mr. GUINTA. Okay.

Mr. WILSON. But, again, I am happy to go and, of course, you will cut me off at any time you want to.

But if you look at each of the three pieces, sir, we negotiated the best possible deal we could with each of the constituencies, with both UAW and with the bondholders. The bondholders overwhelmingly approved the General Motors bankruptcy deal, overwhelmingly.

If they felt they were disadvantaged, there were people who held \$28 billion in claims and they could have voted with their feet. But they chose not to because they felt the deal was a fair deal. So that is why his first point is completely wrong.

His second point is also completely wrong. We were governed in all our actions by the Corker amendments. Senator Corker, who is an honorable and wonderful Senator, put forward a bunch of stipulations in the early TARP work that said that GM's wage rates had to equal—and Chrysler's, but I focused on General Motors—GM's wage rates had to equal Toyota's, and that was an aspect of long negotiations in terms of what does that mean—

Mr. GUINTA. Let me reclaim my time. The question was, was there special treatment or preferential treatment given to union members. It sounds like you are doing a lot of explaining and telling me why that is not the case.

Mr. WILSON. Right.

Mr. GUINTA. I disagree with you. I think it is very clear that there was special preferential treatment given to one group over another. Now, you are free to disagree with me—

Mr. WILSON. I do, sir.

Mr. GUINTA.—but it is pretty clear that is exactly what happened. Let me ask about you. Have you gotten any preferential treatment since your work with unions on this from unions?

Mr. WILSON. Of course not.

Mr. GUINTA. Of course not. You have not done any work since this with any union?

Mr. WILSON. Yes, I have done—

Mr. GUINTA. Oh, you have.

Mr. WILSON. But that is not preferential treatment, sir. I completely resent the—do you have any evidence to suggest that, sir?

Mr. GUINTA. I am asking the question.

Mr. WILSON. I answered the question—

Mr. GUINTA. I would like to know what work are you doing with unions now.

Mr. WILSON. The Teamsters approached me because I have had enormous success in restructuring broken businesses in many walks of life, almost entirely as a private investor, and they asked for my help in their largest employer, YRC, which we successfully restructured out of court, the largest out-of-court restructuring done in many years, in record time. And because of that success they asked me to work with them in other situations.

But I have also worked with private investors; I have worked on my own; I have been on the other side of the table from unions both before and since. So I am an investor and restructuring expert, and I work in situations trying to fix companies before they go away.

Mr. GUINTA. Okay. Thank you very much for your testimony.

I will yield back the balance of my time to the Chair.

Mr. MCHENRY. I thank my colleague for yielding back.

We will now recognize Mr. Johnson of Ohio for five minutes.

Mr. JOHNSON. Thank you, Mr. Chairman, and to the rest of the Subcommittee members for granting unanimous consent to allow me to participate in today's important hearing.

As you may know, I represent Ohio's Sixth Congressional District, which includes parts of northeastern Ohio and the southern suburbs of Youngstown. A large number of Delphi retirees, both salaried and unsalaried, live in the district that I represent. Since I was elected to Congress in 2010, I have been looking closely at the reason why one class of workers, the union retirees, were given preferential treatment over the non-union salaried retirees.

It has now been almost 20 months and I still have not heard a compelling reason as to why this was done, and today I hoped that this hearing would produce answers to those questions that many of us have been asking.

Mr. Bloom, last year, when you were still employed by the Obama Administration, I asked you whether or not that all parties involved were treated fairly and received neither more nor less than they would have simply because the Government was involved. Do you still believe, today, that all parties were treated fairly?

Mr. BLOOM. Yes.

Mr. JOHNSON. Did the newly restructured General Motors have any contractual obligations to top-up the union retirees' pensions?

Mr. BLOOM. I'm sorry, the newly restructured General Motors?

Mr. JOHNSON. Yes. Did the newly restructured General Motors have any contractual obligations to top-up the union retirees' pensions?

Mr. BLOOM. I believe that the newly restructured General Motors, as part of their bankruptcy settlement with the UAW, reaffirmed their commitment to top up the pensions of the Delphi retirees.

Mr. JOHNSON. Was it a contractual obligation?

Mr. BLOOM. I believe it was part of their contract with the UAW, yes.

Mr. JOHNSON. Okay. How can you say that all parties were treated fairly when the union retirees kept their full pensions, while you and others raising the pension funding status 100 percent and the union retirees kept one of the best health care plans in the U.S.; on the other hand, the salaried retirees lost up to 70 percent of their pension plans and their health care? I mean, I learned this principle in kindergarten. Fair is fair. How can you give one group 100 percent and take 70 percent from another group and call that fair?

Mr. BLOOM. First thing, I would say that the union retirees at General Motors did not retain the health care program they had

before; they received a VEBA, which is going to be responsible providing the health care. It does not have sufficient funds to provide the benefits they used to have, number one.

Number two, when I used the word fair, I did not use the word equal. In a bankruptcy, all constituents, and Mr. Feldman made this point earlier, all constituents try to use whatever leverage they have to try to get the best arrangement they can. It was General Motors' business judgment that the overall deal they made with the UAW was fair and the cheapest deal they could make——

Mr. JOHNSON. Mr. Bloom, I hate to cut you off. I appreciate your explanation.

Mr. BLOOM. Well, I am trying to answer your question.

Mr. JOHNSON. Reclaiming my time, Mr. Bloom. I appreciate your explanation, but I am running out of time. It is an interesting nuance that now we have changed the definition. There is a different between fair treatment and equal treatment under the law. That, I don't understand.

Mr. Zywicki, it is clear to me and many of my colleagues and the public that the Obama Administration's auto bailout staff used taxpayer dollars to pick winners and losers, and now it seems, in an effort to not embarrass the President in a very contentious re-election campaign, members of the auto bailout team have refused to be interviewed by the inspector general on their actions. Now, we know they have agreed to today, but up until now it hasn't happened.

Tens of thousands of salaried retirees saw their retirement funds greatly reduced, by up to 70 percent, while the union retirees were made whole and were even topped up. Do you think it was fair?

Mr. ZYWICKI. Equal and fair sound pretty much the same to me, Congressman. And I would also say, to Mr. Guinta's earlier question, which was he asked whether or not the unions were given preferential treatment. What I heard Mr. Wilson say was that he justified preferential treatment that he thought was reasonable. But I don't think there is any question the unions were given preferential treatment.

Mr. JOHNSON. Mr. Zywicki, thank you for your answer.

I would like to yield my last 20 seconds to my colleague from Ohio, Mr. Turner, for a follow-up question.

Mr. TURNER. Mr. Bloom, you were saying that there was a contractual obligation with respect to the top-ups. Those don't survive in bankruptcy, right? So they were free to either affirm or not affirm them. So you can't say that it was a contractual obligation, therefore they must. They were in bankruptcy, correct?

Mr. BLOOM. What I think I said was in the General Motors bankruptcy, General Motors made a contract with the UAW. That contract included affirming the prior agreement relative to the Delphi retirees.

Mr. TURNER. Because I think you were leaving the impression with the Committee that there was some obligation within bankruptcy, and they had no obligation within bankruptcy, it was one that they affirmed, correct?

Mr. BLOOM. That is what I said.

Mr. TURNER. Thank you.

Mr. JOHNSON. I yield back, Mr. Chairman.

Mr. MCHENRY. I thank my colleague for yielding back.

With that, I will begin a second round of questions for the panel.

Now, Mr. Wilson, I just want to make sure this is for the record. My colleague from Pennsylvania, Mr. Kelly, submitted for the record a newspaper article called City and State—I'm sorry, Mr. Guinta submitted that for the record. There is a quote in here, and I think this is the implication of Mr. Guinta. It is not to impugn your character in any way. I understand you took great offense to that, but simply saying, this is a quote from Mr. Gold, the Teamsters Director of Strategic Research and Campaigns: "We are not at liberty to discuss any details, but we approached Harry, Mr. Harry Wilson, after closely following the work on the Obama Administration's Auto Task Force, and given the similarities that GM faces and YRCW faces, we believe he would be a tremendous help in fixing this challenging situation." Now, that is the quote from this.

The implication is that you are pretty agreeable to the unions, and based on their experience. It is not about impugning your character in any way, shape, or form. When you testify that you have these Republican credentials, you are testifying as an Obama Administration official. He is not talking about your character, he is just simply saying that your actions in public life have been agreeable to unions, and I just want to make sure that is corrected for the record and that is established. In no way it is a character assassination; that is the context of his questions and comments.

I want to move on and I want to ask the three auto bailout task force folks, Mr. Bloom, Mr. Feldman, and Mr. Wilson about this and I want to get your comments on the record. Steven Rattner, the Obama Administration's former car czar and one of your former colleagues and boss, admitted to the Detroit Economic Club this past December "we should have asked the UAW to do a bit more." You can see the quote on the screen here. "We did not ask any UAW member to take a cut in their pay."

Do you agree with Mr. Rattner that, in retrospect, you should have asked the UAW to make more concessions? Mr. Bloom?

Mr. BLOOM. I haven't seen Mr. Rattner's speech, so I don't know the broader context, and I certainly don't know what he means by a bit, so I can't comment specifically. If your question is—

Mr. MCHENRY. No, I am asking you to comment—

Mr. BLOOM. You asked me if I agreed with him. I can't tell you whether I agree with him. I can answer your question. If your question is do I think we should have asked the UAW to do more, my answer is no.

Mr. MCHENRY. No?

Mr. BLOOM. No. I think what we did was reasonable.

Mr. MCHENRY. Okay. So no pay cut; fine and dandy.

Mr. BLOOM. I think the aggregate deal that General Motors extracted from the UAW was reasonable.

Mr. MCHENRY. Okay.

Mr. Feldman?

Mr. FELDMAN. Again, I don't know what the context of Steve's quote is.

Mr. MCHENRY. Well, let me restate this.

Mr. FELDMAN. But what I would say about the UAW is you have to remember Chrysler went first. Chrysler's negotiation with the UAW was really led by Fiat. So the deal that they established, which became part of the pattern bargaining in General Motors, was done between two third parties, did not have Task Force intervention, no thumbs on the scale. So, in hindsight, I am perfectly content with where everything came out.

Mr. MCHENRY. Perfectly content. So no, the answer is no.

Mr. FELDMAN. The answer is no.

Mr. MCHENRY. Okay.

Mr. Wilson?

Mr. WILSON. Sure, Mr. Chairman. I have said publicly that I believe that the only kind of remaining legacy issue of General Motors is this pension under-funding, which is an issue—and drag on its stock—an issue for the company, and that I wish that the restructuring had addressed that in some way. It was the judgment of General Motors management, in their negotiation with the UAW, that they would keep the pension intact, and we didn't intervene in that because this was our mandate. But I believe that that is an issue that could have been better addressed in bankruptcy.

Mr. MCHENRY. So the answer is yes, no?

Mr. WILSON. I think more could have been done.

Mr. MCHENRY. More could have been done, okay.

Well, thank you for answering the question. I wanted to give you an opportunity to respond. This was in Mr. Zywicki's testimony.

Mr. Feldman, if you will put up slide two on the screen here, you will see an email that you sent on June 30th, 2009. I recognize that you are not going to have instant recollection of this. In your email you ask GM to bring the UAW into the loop about negotiations over the termination of Delphi pension plans, stating that it "could get messy."

The Obama Administration contended that it would not get involved in the day-to-day affairs of GM. Was it your place to advise GM to talk with UAW, and was this advice based on prudent bankruptcy proceedings or was this more about political expediency?

Mr. FELDMAN. I don't think it was about either, bankruptcy or political expediency. I think if you go back to that moment in time, basically the PBGC had made the determination that it was going to terminate both the hourly plan and the salary plan. It previously made the decision on the salary plan and, really, what I was doing was reminding General Motors that, given their relationships with the UAW, that they needed to get out in front of the communications, not substantive advice to General Motors.

Mr. MCHENRY. Well, this was prior to the PBGC terminating the plan.

Mr. FELDMAN. Correct. But I think if I recall, and I don't have perfect recall, but I think if you recall the PBGC, at that point, had started its process of thinking about a termination of the Delphi hourly and salaried plans.

Mr. MCHENRY. All right. Thank you for putting that on the record.

With that, for the second round, we will go to Mr. Cummings. I will recognize the Ranking Member for six minutes.

Mr. CUMMINGS. Thank you very much.

Mr. MCHENRY. Thank you.

Mr. CUMMINGS. Sorry Mr. Guinta had to leave, I am sure he had another engagement, but he said something that was very interesting. He said there are some folks that feel that only the Federal Government could bail out folks and whatever, make corporations run. I don't want to take the words out of his mouth, but that is what he implied.

I don't think there is anyone over on this side that thinks only the Federal Government can do what the Federal Government was able to do. In other words, there are times when the Federal Government has to step in, and I think I am glad that the Federal Government did step in to this situation because we were able to save millions of jobs.

And I know that there are people who are working right now who would say thank you very, very much for saving my job. There are people who, when their child got that notice about college, being accepted to a college, they don't have to do what the guy did in the commercial, drop his head; they are able to say, okay, I can afford that college, we can do this.

There are others that are able to provide food on the table for their families; there are others that are able to live the life that they want to live, as opposed to being on the sidelines of life, drawing an unemployment check. So I am glad that President Obama and this team did what they did.

In the November 18th, 2008, New York Times op ed entitled, Let Detroit Go Bankrupt, Mitt Romney wrote, "A managed bankruptcy may be the only path to the fundamental restructuring the industry needs. The Federal Government should provide guarantees for post-bankruptcy financing and assure car buyers that their warranties are not at risk." Mr. Romney predicted that, as a result of direct Government assistance to the auto industry, "its demise will be virtually guaranteed."

Mr. Wilson, has Mr. Romney gotten it right? Nearly four years since Mr. Romney wrote those words, is GM showing signs that it is guaranteed to fail?

Mr. WILSON. I am going to try not to interject myself into the presidential debate, but I think—

Mr. CUMMINGS. No, I just want you—you are a Harvard—and that is a lot of thing, I was very impressed. A lot of people don't realize this. You are an honor graduate of Harvard College and then the business school at Harvard. So I don't want anybody to think you are some lightweights. That is why I am asking you. No, I am serious. I heard what they said about you and I am going to ask you some questions about your background a little bit later, but you can go ahead and answer the question.

Mr. WILSON. Sure. I think the results, Congressman Cummings, speak for themselves. I think that GM had its most profitable year ever in its 103 year history in 2011, even though auto sales still have not recovered back to their normalized level. And I think it has a cost structure and a capital structure that have made it the largest and most profitable car maker in the world. So I think as long as they keep on the same path, they maintain the same discipline that they now have, I believe the company has a bright future.

Mr. CUMMINGS. Steve Rattner, the former head of the Auto Task Force, wrote, in a February 24th, 2012, New York Times op ed that Mr. Romney's proposal "sounds like a wonderfully sensible approach except that it is utter fantasy." Mr. Rattner further wrote that "every scrap of private capital had fled to the sidelines" and without government financing initiated by President George W. Bush in December 2008 the companies would not have been able to pursue Chapter 11 reorganization.

Mr. Wilson, Mr. Bloom, Mr. Feldman, is Mr. Rattner's assessment correct? Do you agree that there simply were no other options available aside from complete liquidation or the path that was taken? We will start with you, Mr. Bloom.

Mr. BLOOM. It was our judgment, and I have no reason to question it, and it was based on extensive talking in the market, plus our collective experience, that if the Government had not provided the debtor-in-possession financing, that General Motors would have had to liquidate.

Mr. CUMMINGS. Mr. Feldman?

Mr. FELDMAN. I completely agree. We were in touch with the largest financial institutions in the world. They were simply not going to provide capital. We spoke to the largest private equity funds in the world; they were talking about needing nine months to due diligence General Motors to make a determination as to whether they would make an investment. The U.S. Government, unfortunately, was a lender of last resort, but it was the only lender, in my view.

Mr. CUMMINGS. Mr. Wilson?

Mr. WILSON. That is correct, sir. I talked about, in my written testimony, this unique confluence of events of both the failures of the companies at the time of a complete freeze in the financial markets, and it was those two things that made this so unusual. In normal times, even in bad economic normal times, you can find private capital. We beat the bushes to try to find private capital and there was no one willing to step forward with any kind of reasonable terms or any terms at all to fund even a few billion dollars, much less the \$80 billion we needed to effectuate the rescue.

One private equity firm approached us and said they would put in \$1 billion, so we were still \$79 billion short, if we guaranteed them an 8 percent return. Now, what would the reaction of the taxpayer have been, or this panel, had someone agreed to do that? It should have been, rightfully, outraged and, of course, we said no. So that was the state of the world in which we lived in March of 2009 and the context in which we had to make decisions.

Mr. CUMMINGS. I guess it is easy for people to sit in the bleachers and look down at the game and then try to second guess the efforts of the team, and even when the team wins and wins big time, sit on the sidelines and criticize the calls of the game. That is just my opinion.

I yield back.

Mr. TURNER. [Presiding.] Mr. Kelly?

Mr. KELLY. I thank the Chairman.

Just so we can be clear on this, and I sometimes get confused; I have only been here for a year and a half, but I think the confusion comes are we in Washington, D.C. or are we on Mt. Olympus.

Because the decisions made by government, really, we talk about they bailed out the auto industry. I understand you bailed out the auto industry, being the guy who sold cars his whole life in a family that has been in it over 60 years: it is the market that saved the auto industry.

We are not talking, by the way, gentlemen, about union jobs and non-union jobs, Republican jobs and Democrat jobs; we are talking about American jobs. There is such a fragility to this market, and I really get confused sometimes when people who have never actually done it can tell you exactly what caused this. I mean, wow, I can tell you what caused it: overcapacity, over-production.

When you are structured to do 16.5 million units a year and it goes down to 9 million units a year, my goodness, do you think you have a problem when you have lost over 40 percent of your market? The answer is yes.

The Government interfered with the natural flow of the business cycle. They picked winners and losers. There is absolutely no doubt that they picked winners and losers. This idea that we have an evolving truth that, as time goes forward, we can talk about what is fair and what is equal, that we can pick and choose winners and losers and then sit back and say, but if we hadn't done it, you don't understand, the market would have collapsed.

The market did collapse. It collapsed because people didn't know what their future looked like. A guy who doesn't know if he is going to have a job next year does not go into a 48-month commitment or a 60-month commitment to buy a new car. How do I know this? I stand on the lot with them, I sit in the showrooms with them, and I see their pain.

But whenever you determine that one group will be bailed out and another will not, that is just flat outright wrong. Let's not become confused. It is pure folly that if it had not been for this measure all of the manufacturers would have collapsed. Are you kidding me? Do you know there were auto manufacturers that actually gained market share during that time period? The market, not Government, determines success and failure.

What happened in this situation is that the Government decided who wins, who loses; who gets fully funded, who gets nothing; who gets to sit at the table and eat, and who gets to sit outside. Let there be no confusion over the definition between of fair and equal. In the Country that I grew up in, it is the same thing.

And I get sick and tired when people use a legal argument to do an end-run on what is right for the American people. That is absolutely pathetic. And if that is what we have reverted to, no wonder the American people don't have faith in this institution anymore. No wonder they don't have any faith in a judicial system anymore that picks and chooses winners and losers. Oh, yeah, you can fight it if you have enough money.

I have to tell you, and you know and I know it and everybody else knows it in this Country, I am not against the unions. Listen, I love the unions. I love what they do. But why did you bring them to the table? There is an old saying right now that I really believe in: if you are not at the table, you are on the menu.

This Government picked and chose who the winners and the losers were. The recovery of the American automobile industry has

nothing to do with this. There would still have been companies. These companies would have gone through a bankruptcy, would have come back. We didn't save millions of jobs. A bankruptcy with historical, what a recovery period. The biggest bankruptcy in America history, bam, 36, 60 days we are back on the street and running again, and no problems.

So when we talk about what is clear and what is transparent, when we talk about what is fair, when we talk about the 99 percent and the 1 percent, fairness, to me, is pretty much handpicked. I will be fair with certain people, but I won't be fair with others.

Mr. Chairman, I appreciate the hearing today and I know that there is some confusion about it, but from having been there and having to navigate through those very difficult times, keep in mind one thing: it is the market that will always be the opportunity. How you address that market, your ability to compete in a market that is global, your ability to build cars of the highest quality has never been contested. You know what the problem was? It cost too much to build them here. American people go out and the people I talk to, you know what they look at? How much is it going to cost me a month. So that is what it comes down to.

So I am going to yield back, but I have to tell you, having been there and having been in those waters without a life jacket, without anybody throwing me a line, it is offensive to me that somebody was picked to win and the other people were picked to lose.

Mr. CUMMINGS. Will the gentleman yield?

Mr. KELLY. I do.

Mr. CUMMINGS. I have tremendous respect for you and I know you know that. I just want to make sure I understand. Are you saying that this situation could have gone into bankruptcy and we would have still had the results that we have? Is that what you are trying to say?

Mr. KELLY. Well, reclaiming my time.

Mr. CUMMINGS. Yes, please. I say this most respectfully.

Mr. KELLY. And I appreciate that, Mr. Cummings, because you and I do have a good relationship. It did go through bankruptcy and it came back. The question is who was made whole, who was made partial, who was left out in the cold.

And I have to tell you, gentlemen, I appreciate you being here today, but it took a year? It took a year to come? It took a year to answer these things from SIGTARP? Really? I have a passion for this too. In fact, my friends say to me all the time, Kelly, you don't make any sense to me; you left what was probably the next to the last on the list of what people respect, being the automobile business, and you went to the worst.

[Laughter.]

Mr. KELLY. We rely on you. You are the people who we rely on for the answers. And when you don't testify, what does that look like? Tell me. Not in legal jargon, but in common sense, everyday American jargon. What does that look like to the people who pay for all this, the American taxpayers? It is pathetic. The fact that you can do it and you take advantage of it is even more pathetic.

I yield back my time.

Mr. TURNER. Thank you. As we proceed with additional questions, I just want to remind everyone that the topic of this hearing

is The Administration's Auto Bailouts and the Delphi Pension Decisions: Who Picked the Winners and Losers. It is not the issue of the auto bailout itself, the bankruptcy itself; it is what happened with the Delphi pension decisions. We are having this hearing because these three gentlemen refused to answer questions. Mr. Bloom agreed to answer written questions for me a year ago at a hearing, refused since to answer them, and these three gentlemen have refused to answer SIGTARP's questions. The GAO report is not sufficient; we need the SIGTARP report.

So, with that clarification, I will turn them to Mrs. Maloney. Then after her question we will open it up to an unlimited time period since Mr. Bloom indicated that the only way he was going to answer the questions that he had promised Congress that he would answer a year ago in writing is to be asked those questions in this hearing room. I will stay and ask him those questions.

Mrs. Maloney.

Mr. CUMMINGS. Would the gentleman yield just for one second, one question, Mr. Turner?

Mr. TURNER. Yes.

Mr. CUMMINGS. I just want to make clear on this. Did Mr. Bloom, I have been here and I have listened. Did he say the only way that he would answer questions is to answer—

Mr. TURNER. Well, he is before us.

Mr. Bloom, I asked you—

Mr. CUMMINGS. Is that what you said?

Mr. TURNER.—if you would answer these in writing, and you said that you would not. I certainly intend to ask you these questions here because of that, and your answer stands in the record.

Mr. BLOOM. What I said was if you want to go through these questions, I am here today. I also said I would talk to SIGTARP. If you would like to have SIGTARP ask me these questions, I will do it.

Mr. TURNER. But you refused to provide me in writing the answers that you promised, and we showed the video—

Mr. BLOOM. As I said—

Mr. TURNER.—before this Committee previously in writing.

Mr. BLOOM. I responded to that already.

Mr. CUMMINGS. I just wanted a clarification. That is all.

Mr. TURNER. Thank you.

Mrs. Maloney.

Mrs. MALONEY. Well, pertaining to the pension, I would say that members of Congress recognize and sympathize with the pain that many Delphi workers are experiencing since GM decided not to top-up their pensions, and since everybody seems to want to attack Mr. Bloom, I will just ask him. Do you recognize that pain too, Mr. Bloom, of some people who were not made whole?

Mr. BLOOM. Of course. Speaking personally and to my knowledge, everybody on the Auto Task Force understood and had great sympathy for all of the people involved in this tragic circumstance who had to make sacrifices. The Delphi salaried employees are on the list, but unfortunately, Congresswoman, the list is very long. And as I have said repeatedly, our judgment was, on balance, while there was terrible suffering, much greater suffering was averted. But that in no way is to suggest that there was not suffering.

Mrs. MALONEY. Well, I agree with your statement. Had Delphi failed, had GM failed, not only would their workers have suffered, but also the entire communities. And I would say our overall economic health of our Country would have been much worse.

I would like to take issue with the prior gentleman's statement. He said that it could have been handled and it would have worked itself out on its own. But I want to reference and put into record a November 17th publication of 2010, and this publication is entitled *The Impact on the United States Economy of the Successful Automaker Bankruptcies*. This was issued by the Center of Automotive Research, so this is an independent validation, and in this research, which is independent from the GAO research that basically says the same thing, the Government's actions avoided personal income losses totaling over \$96 billion and avoided 1.1 million net job losses in 2009 and another 314,000 in 2010.

So, Mr. Bloom, since everybody wants you to answer the questions, I will ask you—and, Mr. Feldman, Mr. Wilson, if you would like to comment—is that correct? Do you agree with this independent source? Had it not been for the Government intervention, your work for crucial months in 2009, could the Country have experienced more than a million net job losses? I predict is even more. The impact even hit New York State for the suppliers that went out of business that were supplying the auto industry.

So I just wonder do you agree with this statement from this independent research organization?

Mr. BLOOM. I haven't reviewed the exact—

Mrs. MALONEY. Well, it basically says had we not acted, we would have lost—

Mr. BLOOM. But our judgment at the time, and the material I have seen since then that I have reviewed that suggests that the losses would have been very significant in jobs. Cars said a million; others have used larger numbers. Mark Zandi recently said 2.5 million jobs were at risk. So I am not enough of an economist to choose between them, but I think our judgment that the losses could have been quite catastrophic has been confirmed.

Mrs. MALONEY. I just want to ask you, Mr. Bloom, has any member of Congress congratulated you and thanked you for your hard work in what resulted in, by all accounts, saving over a million jobs that impacted many of our great States like Ohio, Michigan, Pennsylvania, Missouri, and Illinois? They are all interrelated in the supply chain of the auto industry.

I just would like to ask Mr. Bloom, Mr. Feldman, and Mr. Wilson has any member of Congress ever thanked you? Today I want to thank you for your public service. I want to thank you for your hard work in saving American jobs and I would say saving American industry and prestige. I personally cannot even think of an America that doesn't make her own cars. And now we have bounced back with that American spirit, can do, and are even exporting cars and employing people and growing. I just want to know has any member of Congress said thank you?

Mr. BLOOM. Congresswoman, I very much appreciate your kind words. From time to time, other members of Congress have acknowledged that some good things happened.

Mrs. MALONEY. Mr. Feldman, has anyone ever thanked you? I thank you today. Has anyone ever thanked you?

Mr. FELDMAN. I appreciate that, Congresswoman. I think this is the first time I have been thanked.

Mrs. MALONEY. Well, thank you very much. You are an American hero. I appreciate your hard work.

Mr. Wilson?

Mr. WILSON. Thank you as well, Congresswoman. I have had a few Democrats and Republicans thank me over time, but it is always nice to hear it. Thank you.

Mrs. MALONEY. Well, I think more of us should be saying thank you. Thank you for your public service. You saved jobs; you helped America; you grew our economy. Thank you.

Mr. TURNER. Ms. Romero, I would like to thank you for bringing forth the light that these three gentlemen have refused to talk to you and for your bringing it to our attention in a way where we could pull them before us and get them to talk to us to commit to talk to you.

We are going to go to a 10 minute round of questioning. My next questions are going to be for Mr. Feldman.

I do have a quick question for you, Ms. Romero, first. You said in your letter SIGTARP believes that the Auto Task Force played a role in the pension decision and these individuals' failure to speak are a significant obstacle. You do believe that, right, that they played a role?

Ms. ROMERO. Yes. Yes.

Mr. TURNER. Thank you.

Mr. Feldman, we are going to spend a significant amount of time on the issue of what you did, what your role was, because that is really what you guys aren't speaking about. I mean, the whole question from SIGTARP, GAO, this Congress, have been what did you do; what was your role; what was the basis of the decision-making.

Now, I am going to read you your bio, that I am assuming you either approved or wrote yourself. Mr. Feldman was recruited to service as chief legal advisor for the Obama Administration's Task Force on the auto industry. This cabinet level Treasury Department Task Force was assembled to, quoting your bio, help develop the overall strategy to restructure and recapitalize General Motors Corporation and Chrysler, a "strategy" which resulted in the groundbreaking legal proceedings that implemented a comprehensive financial solution for both companies.

Now, SIGTARP believes that you were involved. You said you were negotiating among the parties. I understand that, from an absolute legal standpoint, that PBGC is a party to this and has an ability to make its own decision in settlement negotiations, but they didn't do that in a vacuum, right, Mr. Feldman? They had you running in between a bunch of different other people making proposals to PBGC as to what they should or should not do. Now, isn't that correct, Mr. Feldman?

Mr. FELDMAN. I think really what they would or would not be willing to do—and to just take a step back, the Auto Team, which was the working group at Treasury that reported to the Auto Task Force, was really charged with helping restructure Chrysler and

General Motors. We took on additional tasks that were critical to those two entities, including the financial arm of Chrysler, the financing arm of General Motors, and then ultimately Delphi because General Motors was providing funding and at the time we got involved was really the sole source of funding for Delphi. But we did not—go ahead, you can take back.

Mr. TURNER. Thank you. Going to the issue, then, using your language instead of mine, of determining what they would or wouldn't do, who are the parties that you ran in between of doing the negotiating determining the would or wouldn't do? Because would or wouldn't, it is still going to PBGC and saying someone would like you to do X; will you do X, right?

Mr. FELDMAN. The PBGC and General Motors were the main parties involved in making decisions—well, the PBGC was the main party involved in making decisions about the termination of Delphi's pension plans. What the impact of that was had an impact on General Motors, and I was playing essentially shuttle diplomacy between General Motors and the PBGC, which candidly didn't get along very well.

Mr. TURNER. And who else?

Mr. FELDMAN. On that issue?

Mr. TURNER. Yes.

Mr. FELDMAN. I reported to the Auto Team, but I didn't—there wasn't a—I am not thinking of a party that was directly involved in that.

Mr. TURNER. You didn't share any information about what the package was in developing this strategy that is in your bio with individuals at the White House, with individuals at Treasury? Is that what your testimony is?

Mr. FELDMAN. Well, I worked for Treasury, so certainly I reported to the Auto Team—

Mr. TURNER. Outside of the Auto Team.

Mr. FELDMAN. I kept George Madison informed.

Mr. TURNER. In Treasury, outside of the Auto Team.

Mr. FELDMAN. George Madison was General Counsel of Treasury, not part of the Auto Team. I was in the Legal Department at Treasury, so I did keep Mr. Madison updated; he was the General Counsel of Treasury. But in terms of the White House, the only people I ever spoke to at the White House was Brian Deese and Larry Summers.

Mr. TURNER. Okay, we are going to turn to emails now. We have a July 6th email from Joseph House at PBGC. This one we don't have on the top.

Mr. FELDMAN. Okay.

Mr. TURNER. It is a July 6th email, 9:45 p.m., so he is emailing late, and he said I just spoke with Matt Feldman, who relayed the following: "We agreed that any settlement discussions would be best saved for direct coordination between U.S. Treasury and PBGC at this point, rather than a subject of group coordination."

Now, he is saying that the settlement discussions were, at that point, as a result of his conversation with you, a direct coordination between Treasury and PBGC. He does not mention General Motors. Do you disagree with his email?

Mr. FELDMAN. You would have to ask Mr. House what he meant by the email, but I interpret what he meant to mean that we were going to talk to the PBGC and then we, meaning Treasury, were going to talk to General Motors. Treasury did not play a role or did not have authority to settle issues between the PBGC and General Motors.

Mr. TURNER. But you did have a role in making recommendations and making proposals.

Mr. FELDMAN. I would certainly comment on proposals and recommendations. The PBGC would ask me did I think that something would be acceptable; General Motors would say do you think the PBGC would find something acceptable. I certainly gave them my judgment.

Mr. TURNER. Well, what occurred after the July 6th email—I am going to read that one again. This is Joseph House saying that he had just spoken to you and that he agreed with you that any settlement discussions would be saved for group coordination between Treasury and PBGC, rather than direct coordination, is followed by the email that I showed you previously, which is slide 6 on July 8th.

If we could have slide 6, please.

[Slide.]

Mr. TURNER.—where again Mr. House is reporting that he had spoken to you. This one is 6:23 p.m. and this is July 8th. So subsequent to your reported agreement by Mr. House that we are going to directly coordinate this settlement negotiation between Treasury and PBGC, he then reports that you say that Feldman reported that he made progress discussing our proposal with a number of key folks in Treasury and at White House, but has not yet wrapped up his coordination.

Let's turn to slide 5, then.

[Slide.]

Mr. TURNER. This is July 15th, 10:57 a.m. This is Karen Morris forwarding one from John Minke and it says, Feldman will then take it to GM and get their approval, which will either be a rubber stamp or one last chance to nick us on the deal.

We all accept that PBGC has the legal authority with respect to its decision-making. We also know that it did that in the environment of the pressure of these negotiations and we also understand that there were a number of parties who had positions and roles and proposals as to what PBGC should do or, using your language, would or wouldn't do.

Mr. Feldman, we would like to get a better understanding of that, which is why you have been called this Committee and why SIGTARP wants to talk to you, because they believe that you were actively involved in the decision-making. Now, I am going to ask you a very simple question. I am assuming that with respect to the Delphi salaried pensions, that the proposals that ended up with the pensions being cut were not solely generated by PBGC; that in the negotiations with your liaison with the White House, others in Treasury outside of the Auto Task Force, the Auto Task Force, and General Motors, that they had positions and recommendations as to how those pensions should be handled. Is that correct?

Mr. FELDMAN. I never had a conversation, nor do I recall any conversations where we told the PBGC how the——

Mr. TURNER. I didn't ask you that.

Mr. FELDMAN. I am sorry.

Mr. TURNER. I ask you whether or not anyone else had a position or a proposal in your shuttle negotiations with respect to the Delphi salaried pensions other than PBGC. That is a pretty simple question. I would assume the answer has to be yes.

Mr. FELDMAN. I don't believe so, not with respect to the salaried.

Mr. TURNER. So you are testifying under oath before this Committee that at no time did anyone else that you were working with in your position as the chief legal adviser shuttling negotiations, no one else offered you and no one else provided you any other proposal with respect to the Delphi salaried pensions in any aspect?

Mr. FELDMAN. Let me correct it. Delphi certainly, its position was it wanted to retain the pension plans and have General Motors pay for it or assume it. As I recall, and the time frame is a little bit fuzzy, but, as I recall, Delphi certainly did not want to give up its pension plans in the early stages of my involvement.

Mr. TURNER. Anyone else have a position or a proposal with respect to those pensions during your settlement negotiations?

Mr. FELDMAN. I don't want to be unequivocal, but not that I recall.

Mr. TURNER. As you were before. Well, that is part of the subject matter of this investigation and SIGTARP's investigation, so I wish you well in your recollection process with the——

Mr. FELDMAN. I am happy to look at more emails or other information you might have.

Mr. TURNER. Excellent.

Mr. FELDMAN. I don't recall it.

Mr. TURNER. Excellent.

Mr. Cummings?

Mr. CUMMINGS. Mr. Chairman, just out of curiosity, are you planning to end the hearing now or are you getting ready to just go on and on and on?

Mr. TURNER. No, I am going next to Mr. Bloom for him to answer the questions that he is now refusing to answer in writing that he had promised Congress in June of last year that he would answer in writing, because he invited those questions, and I will entertain, with your concurrence, the dismissal of the other panel members if there are no other questions for those other panel members, so Mr. Bloom can stand before us and answer the questions he has refused to answer.

Mr. CUMMINGS. Well, that is fine with me. And I hate to waste people's time, so I think that is very generous of the Chairman. You know, one of the things, Mr. Chairman, it has come to my attention that your questions of Mr. Bloom have been answered by the Secretary of the Treasury, and Mr. Bloom forwarded your questions after the hearing.

Mr. TURNER. Actually, no, they haven't. I have the Secretary's answers and his answer was this is a matter of litigation; I cannot answer.

Mr. CUMMINGS. I see. All right. But if the Chairman wants to dismiss, I think we should allow these folks to go. I have no problem with that.

Mr. TURNER. I am certainly fine with that.

At this point, then, we will take——

Mr. CUMMINGS. One other thing. I did forget to say one thing. When Mrs. Maloney was asking the question about anybody saying thank you, I just want you all to know I am thanking you, and I thank you very much.

To Ms. Romero, I am hoping that this has been helpful to you. I am hoping that you get the cooperation you need. We, on both sides of the aisle, support your efforts and we want to make sure you have access to the information that you need in order to do your job, and I want to thank you for working with both of our offices to try to make this thing move along. Thank you.

Ms. ROMERO. Thank you so much, Ranking Member Cummings.

Mr. TURNER. At this point we will take a one minute recess while the other members of the panel but for Mr. Bloom excuse themselves.

[Pause.]

Mr. TURNER. Mr. Bloom, we are going to get started. We have votes that are going to occur, so we are going to be limited, as I am certain you are very sad to hear, in the number of questions that we are going to ask you. I want to reiterate that these are questions that were given to you on June 22nd that to this Committee, in a seat similar to the one you are sitting in, you said absolutely that you would answer in writing. You did not answer them and today you are refusing to answer them in writing, so we are going to go through this where I ask you the question and get your answer.

Mr. BLOOM. Congressman, the only clarification I would like to make is that I believe that the letter that the Secretary of the Treasury or Tim Madson, on behalf of the Secretary of the Treasury, sent you on November 1st, 2011, did not refuse to answer the questions because of the litigation. In fact, there are two and a half pages of response to the issues raised in the letter. But that said, if you have questions, I will do my best to answer them.

Mr. TURNER. We will submit those questions and answers, because we have them, obviously, for the record and everyone can see that in fact they say this is subject to litigation. But we are not going to waste our time on this.

Mr. CUMMINGS. Mr. Chairman, Mr. Chairman, Mr. Chairman. Just a point of clarification. I have the letter, the November 1st letter, and I have just kind of perused it, but my staff has read it in detail, and just for clarification, you said that he said that it was under litigation. It just seems like there is a lot more to this letter than that. He seems to be answering quite a few things in detail. I just wanted clarification on it, that is all.

Mr. TURNER. We have answers both in this letter and also letters answered directly from Secretary Geithner, and in that letter he specifically states, he cited both and you cited it previously, an answer of litigation. And this does not answer the questions, but we will go forward.

Mr. Bloom, in the discourse between Treasury and PBGC, what role did the Auto Task Force play in the decision-making to terminate the pension plan of the Delphi salaried retiree workers?

Mr. BLOOM. I couldn't really expand on what Mr. Feldman said. I think that would be my answer.

Mr. TURNER. So you have no separate answer of yourself.

Mr. BLOOM. No.

Mr. TURNER. Well, Mr. Feldman indicated that it was an advisory position, and what we would like to know is what was the position of the Auto Task Force in those discussions with respect to the Delphi salaried workers and their pensions.

Mr. BLOOM. I think it was what Mr. Feldman said it was.

Mr. TURNER. You are going to do that for every answer?

Mr. BLOOM. I don't know.

Mr. TURNER. You don't have an independent answer?

Mr. BLOOM. On that question, Congressman, I do not have a different answer. If I agree with what has already been said, I thought it would be expeditious for me to—

Mr. TURNER. If you had answered it in June would you had your own answer?

There are many that believe that there were significant numbers of conflicts of interest between the Treasury, PBGC, the Auto Task Force, and new GM. Secretary Geithner serving on both the board of PBGC, being the Secretary of the Treasury, the Auto Task Force being part of Treasury, and, of course, new GM receiving from the Treasury its capital infusion.

Did you ever have a discussion at the Auto Task Force, the actual or potential conflicts within Treasury and the Auto Task Force with respect to this bankruptcy proceeding and the Delphi salaried pensions? And what was the subject of those discussions?

Mr. BLOOM. I do not recall a conversation in Treasury about whether or not the issues you raise would pose a conflict of interest. I do not recall such a discussion.

Mr. TURNER. Do you believe now that they do?

Mr. BLOOM. I don't see where a conflict of interest would have been, no, sir.

Mr. TURNER. In the termination of the Delphi salaried pension plans, a significant issue of dispute are the foreign assets held by Delphi and the liens that PBGC either asserted or might have asserted against those liens. Ultimately, PBGC released these liens as part of a settlement in exchange for payments by new GM that did not include the Delphi salaried retirees' pension plans; the liens did. Do you recall any discussions at the Auto Task Force concerning Delphi's foreign assets, the liens, and PBGC?

Mr. BLOOM. I do not recall any such discussions.

Mr. TURNER. Would you assert today that those discussions did not occur?

Mr. BLOOM. No.

Mr. TURNER. Is it possible they occurred?

Mr. BLOOM. I think anything is possible. I do not recall any such—

Mr. TURNER. Did you ever have a conversation about Delphi's foreign asset and the liens of PBGC?

Mr. BLOOM. I have no recollection of having any conversation of that nature.

Mr. TURNER. We are getting pretty far here. So far we get you will give us the answer of the gentleman who answered previously or you don't recall. Helpful.

Mr. BLOOM. I can only testify to the best of my ability, Congressman.

Mr. TURNER. Clearly. There is a significant amount of concern that has been raised about political considerations with respect to the PBGC negotiations and the pension plans, salaried retirees' pensions, and even the issue of the foreign asset liens of PBGC. Did you ever have any consideration or any discussions concerning the political effects of the outcomes of your recommendations?

Mr. BLOOM. Could you clarify what you mean by the political impacts of the outcomes?

Mr. TURNER. I think it is fairly clear. Did you have any discussions concerning the political aspects or consequences of your decision-making?

Mr. BLOOM. No, not that I recall.

Mr. TURNER. The United Auto Workers have stated that the Delphi salaried retirees should be treated with fairness and equity. Additionally, the UAW stated in a letter dated January 15th, 2010, that it supports providing the same top-ups to the salaried workers as a matter of fairness and equity that had been provided to other Delphi workers. You answered Mrs. Maloney and indicated that you understand the pain that people have. Do you agree with UAW?

Mr. BLOOM. I am not familiar with the full context of the UAW's comment, but I can answer your question. I can't say whether I agree with them or not because I haven't read that document. I think a lot of people, as I said earlier, have suffered as a result of the GM bankruptcy, and if Congress would choose to help one of those constituents who was hurt, that would be up to Congress to do. I think it would open a can of worms, but I don't have a judgment as to whether Congress ought or ought not to do it.

Mr. TURNER. Mr. Cummings?

Mr. CUMMINGS. I guess I have about, what, about 10 minutes? I am going to read this letter into the record.

November 1st, 2011, Department of Treasury. It is addressed to the Honorable Michael R. Turner and it says, Dear Representative Turner. This is from Mr. Massad, the Assistant Secretary, Department of Treasury. And this is one of the letters that we were just talking about in response to questions that were raised sometime earlier by Congressman Turner.

It says I am writing in response to your recent letter to Secretary Geithner in which you raise certain questions regarding the Pension Benefit Guaranty Corporation's decisions related to the pensions of certain former employees and retirees of the Delphi Corporation. You submitted these questions previously to Mr. Ron Bloom, who has since left his position with the Administration. Please allow me to respond on behalf of the Secretary.

We recognize that the bankruptcy of Delphi has been extremely difficult and challenging for all its employees and we are acutely aware of the significant hardships that the entire United States

automobile industry has faced in recent years. The issues you raise in your letter pertaining to certain agreements entered into by General Motors Corporation in 1999, when the old GM spun off Delphi into a separate company, as well as decisions made in connection with Delphi's 2005 bankruptcy filing.

Around the time of Delphi's 1999 spinoff from old GM, old GM entered into "top-up agreements" commitments to pay supplemental pension benefits to certain participants in the Delphi hourly pension plan, represented by three unions, United Auto Workers, the International Union of Electrical Workers, and United Steel Workers. Those agreements provided that, in the event that benefits under Delphi hourly plan were frozen or the plan was terminated, old GM would cover any shortfall below the level of benefits promised.

Over the next several years, Delphi suffered large losses and filed for bankruptcy in October 2005. In 2007, old GM, Delphi, and the three unions who were party to the top-up agreements agreed to extend these commitments. Although there were negotiations between old GM and other unions concerning similar arrangements, old GM did not enter top-up agreements with any other union, nor did it enter into an agreement with participants in the Delphi salary pension plan. At the time of the 1999 spinoff, the Delphi salary plan was fully funded; whereas the Delphi hourly plan was underfunded. Delphi's original plan was to emerge from bankruptcy proceedings without terminating its pension plans.

In 2009, four years after Delphi filed for bankruptcy protection in 2005, it was determined that, for Delphi to emerge from Chapter 11, its pension plans would need to be terminated. As a result, Delphi entered into agreements with the PBGC to terminate the Delphi salary plan and the Delphi hourly plan, and placed both plans under the trusteeship of the PBGC.

Treasury did not have a role in authorizing, approving, or consenting the termination of the Delphi salary plan. In 2009, in connection with the bankruptcy proceeding of old GM and Delphi, General Motors Company agreed to honor certain commitments into which old GM had entered, including the 1999 top-up agreements. New GM has stated publicly that although the Delphi bankruptcy was "a very difficult situation," it felt that it had made appropriate provisions for the Delphi salary plan at the time of the spinoff in 1999.

The questions you submitted to Mr. Bloom primarily asked whether the Presidential Task Force on the auto industry was involved in the decisions made by the PBGC and GM regarding the pensions of former employees and retirees of Delphi. As Mr. Bloom explained in various congressional testimonies in 2009, and more recently before the Subcommittee, the previous administration provided temporary loans to General Motors and Chrysler to avoid uncontrolled liquidations of these companies at a time when our economy and financial system were already severely stressed.

President Obama agreed to extend that assistance provided that the companies produce viability plans as to how they could become competitive. On February 15th, 2009, President Obama created the Auto Task Force, made up of cabinet level officials and staffed by Treasury, to review the viability plans for the companies. The over-

riding objective that guided the Auto Task Force was to bring much needed stability to this crucial sector of our economy, keep hundreds of thousands of Americans working, and give General Motors and Chrysler a chance to become viable and competitive American businesses.

As Treasury officials have stated, the President directed the Auto Task Force to take a commercial approach and ensure that in any restructuring the companies took on only those liabilities necessary for successful operation. The Auto Task Force refrained from intervening in the day-to-day decisions of these companies. These companies' restructuring, including GM's decision to assume top-up agreements entered into by GM in 1999, were consistent with those principles.

These matters have also been reviewed by our Nation's judiciary in two contexts, as well as by the Government Accountability Office. As you may know, the termination of Delphi salary plan and its placement under the trusteeship of the PBGC are currently the subject of litigation in black versus Pension Benefit Guaranty Corporation. On September 2nd, 2011, the court dismissed the portion of the case against Treasury, the Auto Force, Secretary Geithner, Steve Rattner, and Ron Bloom.

In addition, the bankruptcy court in the Southern District of New York reviewed and approved GM's bankruptcy and reorganization. In assessing the new GM's decision to honor the top-up agreements, the bankruptcy court found no violation of the bankruptcy code or applicable case law, and concluded that, as a matter of reality, the purchaser needs a properly motivated workforce to enable the new GM to succeed, requiring it to enter into satisfactory agreements with UAW, which includes arrangements satisfactory to the UAW for UAW retirees.

In addition, the bankruptcy judge and the district court approved the transaction at every step. None of those judges seriously questioned the validity of the legal process, which was typical for a bankruptcy sale. In fact, the bankruptcy judge stated, "While because of the size of this case and interests at stake, GM's Chapter 11 case can hardly be regarded as routine. GM's proposed Section 363 sale breaks no new ground. This is exactly the type of situation where there is a good business reason for immediate sale."

In its March 30th, 2011, review of the key events leading to the termination of the Delphi hourly and salary plans, GAO stated that "The Auto Task Force did not indicate what should be done with the Delphi pensions."

We are committed to continue transparency regarding the restructuring of General Motors. There is an extensive public record available concerning treatment of the pensions of Delphi employees and retirees. Congress has held several detailed hearings on the subject and there are a number of publicly available court filings, bankruptcy court opinions, oversight reports, and statements from Delphi and General Motors.

Treasury has posted online certain key automotive industry financing program documents which are available at FinancialStability.gov. Additionally, pursuant to a request from you and other members of the House Committee on Oversight and

Government Reform, Treasury has provided you numerous documents related to the Delphi pension matter.

In the end, GM underwent a fair and open bankruptcy. This process required deep and painful sacrifices from all stakeholders, including workers, retirees, suppliers, dealers, creditors, and countless communities that relied on a vibrant American auto industry. However, the steps that the Administration took not only avoided a catastrophic collapse and brought needed stability to the entire auto industry, they also kept hundreds of thousands of Americans working and gave GM a chance to once again become a viable, competitive American business, and they avoided further shocks to our financial system and economy at a time when we could least afford it.

Thank you for your continued attention to this important matter. Please feel free to contact me or my staff if we can be of further assistance. Sincerely, Timothy G. Massad.

Mr. Bloom, do you have anything you can add to that? Have you learned anything else in an effort to satisfy the Chairman's questions?

Mr. BLOOM. No.

Mr. CUMMINGS. I yield back.

Mr. TURNER. Mr. Bloom, I want to thank you for sitting through and answering some of the questions that I provided you in writing on June 22nd of last year that you had committed to answer in writing that you have never submitted answers to. And the reason why I appreciate you sitting here and answering them is because I wanted, on television and on the record, both your demeanor and your lack of answers to be evident.

Mr. Bloom, we have had this hearing because you refused, for 14 months, to answer SIGTARP's questions. You had to come to our hearing because we have subpoena power; they don't. You come and you say I will be glad to answer SIGTARP's questions. Mr. Bloom, you are not glad to answer anybody's questions. You are not glad to answer mine; you are not glad to answer anybody's. And you were responsible for affecting billions of dollars and thousands of people's lives with our taxpayers' dollars.

People are not only hurt, they are angry, and this is exactly, contrary to what President Obama promised us with the most open administration, not someone like you sitting in front of us, unwilling to answer the questions.

Now, I want to—Mr. Cummings read the letter. I want to re-emphasize the paragraph that he read that is on page 2, at the bottom, that says, As you may know, the termination of the Delphi salary plan and its placement under the trusteeship of the PBGC are currently the subject of litigation in *Black v. Pension Benefit Guarantee Corp.*

This letter is not an answer to the questions that I had submitted to you.

Then we have, and I am going to submit these for the record, Secretary Geithner's answers, which were similar questions that were posed as posed to you, where we were just trying to find out how were these decisions made, who made them, so that you can have the appropriate type of oversight over taxpayers' dollars, because that is how Government works; it is open, it is a democracy.

You are not playing with the undiscretionary dollars of the President, you are actually effectuating and administrating taxpayers' dollars.

So Geithner had the same questions. I am going to submit these for the record. And he says openly in the beginning answer that the termination of the Delphi retirement program for salary employees and its placement under the PBGC's trusteeship are currently the subject of litigation in Black versus PBGC. I cannot comment on the specifics of any pending litigation.

And then for the next eight pages, these are the Secretary's response. I cannot comment specifically on these topics as they are the subject of pending litigation. I cannot comment specifically on these topics as they are the subject of pending litigation. I cannot comment specifically on these topics as they are the subject of pending litigation. And he goes on for the next 33, almost 35 questions to answer the same way, that he can't answer us.

So here we sit. People have lost their pensions; billions of dollars spent. The Secretary of the Treasury won't answer the questions. You won't answer the questions. SIGTARP has many of them. We are going to work with SIGTARP on their processes of trying to solicit from you substantive and valuable answers to the questions.

This Committee has subpoena power, it has deposition power. Mr. Bloom, I assure you, we can continue to revisit this with you and your panel members. I would certainly hope that when you say you are going to participate and answer SIGTARP's questions, that it is certainly going to be more thorough than your answers here.

Now, Mr. Bloom, we are all waiting for a SIGTARP report that is going to tell us what happened. GAO can't give it to us. This process should not be in this manner because of your commitment to the taxpayers. Do we have your commitment that you will work to refresh your recollection, that you will try to answer fully, to your greatest ability, the questions that SIGTARP is going to have for you?

Mr. BLOOM. I will answer the questions that SIGTARP asks me to the best of my ability.

Mr. TURNER. Mr. Bloom, with that, we have votes that have been called. We are going to adjourn the hearing.

[Whereupon, at 12:52 p.m., the subcommittee was adjourned.]

GAO

United States Government Accountability Office
Report to Congressional Requesters

December 2011

DELPHI PENSION PLANS

GM Agreements with
Unions Give Rise to
Unique Differences in
Participant Benefits



GAO-12-168



Highlights of GAO-12-168, a report to congressional requesters

Why GAO Did This Study

The Pension Benefit Guaranty Corporation (PBGC) terminated the underfunded six qualified defined benefit (DB) plans of the Delphi Corporation, a former subsidiary of General Motors (GM), in July 2009. Given questions about how PBGC came to terminate the plans, whether treatment for certain Delphi workers was preferential, and the role of the U.S. Department of the Treasury (Treasury) in these outcomes, GAO was asked to answer the following questions:

- (1) What precipitated PBGC's decision to terminate Delphi's plans and what was Treasury's role, if any?
- (2) What actions did PBGC take to secure Delphi domestic and foreign assets as part of its recovery process?
- (3) Why will certain Delphi employees receive reduced pension benefits and others will not?
- (4) What information was communicated to employees about the termination of their plans?

GAO issued a timeline of key events leading to the plans' termination in March 2011 (GAO-11-373R). To examine the issues more fully for this report, GAO analyzed additional information from PBGC, Treasury, GM, Delphi, and Delphi employee groups and unions, and interviewed representatives from those organizations. For comparison purposes, GAO also reviewed the termination and recovery processes for all ten firms with the largest termination claims from plans trustees by PBGC.

Treasury's comments generally agreed with GAO's findings and conclusions.

View GAO-12-168. For more information, contact Barbara Bovbjerg at 202-512-7215 or bovjbergb@gao.gov.

December 2011

DELPHI PENSION PLANS

GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits

What GAO Found

As a result of the termination of Delphi's pension plans in July 2009 and statutory benefit limits, many Delphi retirees will receive less from PBGC than their full benefit promised by Delphi. However, some of those experiencing statutory reductions will still receive their full benefits because of union agreements with GM. With respect to PBGC's role in the process, the steps taken to terminate the plans and reduce some benefits according to statutory limits are consistent with PBGC's usual actions when terminating large plans.

- PBGC's decision to terminate the plans was ultimately precipitated by the apparent lack of a viable sponsor, impending foreclosure on Delphi's assets, and the prospect of increased losses for PBGC and the plans that would occur upon liquidation. Similar factors were often at play in PBGC's decisions to terminate other large plans we reviewed.
- PBGC used its authority under the law to file liens and negotiate recoveries of corporate assets on behalf of Delphi's plans. Although PBGC ultimately recovered only about 6 percent of the total unfunded benefit liabilities in these plans, this ratio falls within the range of recovery ratios for other large terminated plans we reviewed.
- Among the Delphi plan participants PBGC had reviewed as of June 2011, just under half of both hourly and salaried plan participants received reductions in their promised benefits due to the application of statutory benefit limits. While initial estimates indicate a higher proportion of Delphi retirees have been subject to the guarantee limits compared with retirees of most other large terminated plans, PBGC expects Delphi's higher proportion to decline once all benefit calculations are finalized.
- Delphi sent required communications to employees concerning deteriorating plan funding, and PBGC sent communications concerning plan termination and its impact on participants' benefits.

However, the role that GM played in the process was more unusual. Some Delphi hourly plan participants are protected from benefit losses caused by statutory limits because GM agreed to "top up" potential benefit losses for certain Delphi union employees. These agreements were renewed and upheld at numerous points in Delphi's history, including by the "new GM" established in July 2009. Because of these agreements, about 60 percent of the participants in the hourly plan will have any statutory reductions in their benefits restored by GM. Other hourly employees, as well as all employees in Delphi's salaried plan and the other smaller plans, were never covered by comparable top-up agreements.

Although acknowledging the significant role Treasury played in GM's restructuring, GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions. Similarly, PBGC officials stated that PBGC independently made the decision to terminate the plans. Still, in response to a prior GAO recommendation, Treasury revised its reporting policy to increase transparency on its activities related to the auto industry. GAO believes that the most effective means of addressing concerns about Treasury's multiple roles regarding pensions is also through such increased transparency.

Contents

Letter		1
	Background	3
	Threat of Increased Losses Led PBGC to Terminate Delphi Pension Plans	10
	PBGC Pursued Claims on Delphi's Assets, Resulting in between \$600 Million and \$650 Million in Recoveries	21
	Many Delphi Retirees Are Subject to Benefit Reductions and Only Certain Hourly Retirees Are Protected by Union Agreements with GM	28
	Both Delphi and PBGC Provided Delphi Employees with Information	35
	Concluding Observations	38
	Agency Comments and Our Evaluation	39
Appendix I	Single-Employer Firms with the Largest PBGC Claims for Terminated Plans (1975 through 2011)	41
Appendix II	Number and Percentage Delphi Retirees with Reductions in ERISA Benefits Due to Guaranteed Benefit Limits (as of June 1, 2011)	42
Appendix III	Allocation of Plan Assets and Recoveries to Unfunded Nonguaranteed Benefits	43
Appendix IV	Comments from the Department of the Treasury	48
Appendix V	GAO Contact and Staff Acknowledgments	50
Related GAO Products		51
Tables		
	Table 1: Terminated Delphi Defined Benefit Plans, as of July 31, 2009	6

Table 2: Types of Guaranteed Benefit Limits under ERISA	7
Table 3: Number and Percentage of Delphi Retirees Subject to Reductions in Estimated Benefits Due to ERISA Limits (as of June 1, 2011)	29
Table 4: Allocation Priority Categories (PC)	44
Table 5: Comparison of Allocation of Plan Assets and Recoveries among Plans of Firms with 10 Largest Claims	45

Figures

Figure 1: Who Is Bearing the Cost of Delphi Pension Plans' Unfunded Liabilities	20
Figure 2: PBGC Asset Recoveries in Delphi's Bankruptcy	25
Figure 3: Distribution of Asset Recoveries by PBGC in Delphi's Bankruptcy	27
Figure 4: Number of Delphi Employees Covered by GM Top-Ups, by Plan	34
Figure 5: Status of Benefits for Participants from Delphi's Hourly and Salaried Plans (as of June 2011)	35

Abbreviations

AIFP	Automotive Industry Financing Program
DB	defined benefit plan
DIP	debtor-in-possession
DSRA	Delphi Salaried Retiree Association
ERISA	Employee Retirement Income Security Act of 1974
GM	General Motors
IUE	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO
MSR	mutually satisfactory retirement
PBGC	Pension Benefit Guaranty Corporation
UAW	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
USWA	United Steelworkers of America

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

December 15, 2011

Congressional Requesters

The Pension Benefit Guaranty Corporation (PBGC), the government corporation that insures private-sector defined benefit (DB) plans, terminated the six plans of Delphi Corporation (Delphi) in July 2009.¹ The plans were estimated to be underfunded by a combined \$7.2 billion at termination, of which PBGC expects to cover about \$6 billion.

Since the termination, there has been controversy over different pension benefit outcomes for certain unionized and non-unionized Delphi retirees. Further, the involvement of the U.S. Department of the Treasury (Treasury) in the bankruptcy of General Motors (GM), Delphi's former parent company, raised questions for some regarding the role that Treasury played in PBGC's decision to terminate Delphi's pension plans and the resulting outcomes for Delphi plan participants. Given these concerns, you asked us to answer the following questions:

1. What precipitated PBGC's decision to terminate the plans and what was Treasury's role, if any?
2. What actions did PBGC take to secure Delphi domestic and foreign assets as part of its recovery process?
3. Why will certain Delphi employees receive reduced pension benefits and others will not?
4. What information was communicated to employees about the termination of their plans?

In March 2011, we issued a report providing a timeline of key events related to the Delphi plan terminations in which we provided information about some of these issues.² To address the issues more fully for this

¹A DB plan promises a benefit that is generally based on an employee's years of service and, often, compensation as well. The employer is generally responsible for funding all or most of the benefit, investing and managing plan assets, and bearing the investment risk.

²GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, GAO-11-373R (Washington, D.C.: Mar. 30, 2011).

report, we conducted additional analysis of PBGC documents, such as benefit estimates, actuarial reports, internal documents on the termination decision and on asset recovery, and reports from PBGC's Office of Inspector General. We also conducted follow-up interviews with PBGC officials to clarify information from the documents. To explore further Treasury's role in the termination of Delphi's pension plans, we reviewed publicly available documents, such as Treasury officials' depositions and other legal documents, including those related to pending litigation,³ and conducted additional interviews of GM, Delphi, and the Delphi Salaried Retiree Association (DSRA). We reviewed relevant e-mails provided by PBGC and DSRA.⁴ We also interviewed union, GM, Delphi, and DSRA officials to obtain their perspectives on plan termination, asset recovery, benefit determination, and communications, as well as analyzed additional documents related to these issues from these groups, including data from GM about benefit guarantees they have paid or expect to pay to former Delphi employees.

To provide benchmarks and comparative examples, we also gathered data about other terminated plans from PBGC's list of firms with the ten biggest termination claims in PBGC's history. (Delphi is number two on this list, behind United Airlines.)⁵ For example, to provide context for how PBGC pursued recoveries for Delphi, we reviewed the recovery process for all nine of the other firms on this list, and identified the allocation of recoveries across priority groups for all plans with more than 5,000 participants (18 of the 29 plans these firms sponsored). We did not examine PBGC's actions to date to value Delphi's assets, as this effort is

³Delphi Salaried retirees are in litigation against PBGC regarding termination of Delphi's pension plans. *Black v. PBGC*, No. 2:09-cv-13616 (Bankr. E.D. Mich. filed Nov. 5, 2009). In September 2011, the court dismissed the retirees' claims against Treasury and Treasury officials. Order Granting Defendant United States Department of the Treasury, Presidential Task Force on the Auto Industry, Timothy F. Geithner, Steven L. Ratner, and Ron. A. Bloom's Reviewed Motion to Dismiss, No. 09-13616 (E.D. Mich. Sept. 1, 2011). It is GAO policy to avoid taking a position or addressing claims that are currently in litigation. This review was structured to avoid influencing or interfering with the litigation and this report does not address the legal issues involved in the litigation.

⁴The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is conducting an audit of Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan. SIGTARP has not announced when it expects to complete this audit.

⁵See appendix I for a summary description of PBGC's 10 largest terminations.

still ongoing. PBGC's Office of Inspector General has recently reported on deficiencies in PBGC's efforts to value assets for two other firms on the top-10 list: National Steel and United Airlines.⁶ According to the Inspector General's office, the contractor identified as having conducted the valuation of assets for both the National Steel and United Airlines terminations is not the contractor conducting the valuation of assets for Delphi.

We conducted this work between April 2011 and December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We found the data from PBGC and GM sufficiently reliable for the purpose of helping us answer our research questions, and we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Delphi-GM History

Delphi was a global supplier of mobile electronics and transportation systems that began as part of GM and was spun off as an independent company in 1999.⁷ At that time, Delphi established two pension plans, with assets and liabilities transferred from their GM counterparts: the Delphi Hourly-Rate Employees Pension Plan (hourly plan) and the Delphi Retirement Program for Salaried Employees (salaried plan). When Delphi was spun off from GM in 1999, GM was required to collectively bargain with the affected unions—including International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine

⁶PBGC Office of Inspector General Evaluation Report, *PBGC's Plan Asset Audit of National Steel Pension Plans Was Seriously Flawed* (OIG Eval-2011-10/PA-09-66-1, Washington, D.C.: Mar. 30, 2011); "Letter to Chairman Miller of The Committee on Education and Labor Regarding PBGC Termination of United Airlines Pension Plans" (LTR-2010-10, Washington, D.C.: Jul. 20, 2010); and *PBGC Processing of Terminated United Airlines Pension Plans Was Seriously Deficient*, (OIG, Eval-2012-05/PA-10-72, Washington, D.C. Nov. 30, 2011).

⁷For a more detailed treatment of this history, see GAO-11-373R.

and Furniture Workers, AFL-CIO (IUE);⁸ and the United Steelworkers of America (USWA); as well as other "splinter" unions.⁹ As a result of these negotiations, GM agreed to provide a retirement benefit supplement (referred to as "top-ups") to "covered employees" with UAW, IUE, or USWA (but not the splinter unions), should the Delphi hourly plan be frozen or terminated.¹⁰ Covered employees included those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999. Salaried employees and hourly employees not in the three unions were not covered by top-up agreements.

Over the period 2001 to 2005, Delphi suffered large losses, and the company filed for Chapter 11 bankruptcy in October 2005, although it continued to operate.¹¹ Beginning in the fall of 2008, economic conditions deteriorated throughout the auto industry, affecting both Delphi and GM. GM's deteriorating financial condition in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry

⁸Effective October 1, 2000, IUE merged with the Communications Workers of America to become the Industrial Division of CWA (IUE-CWA); for the purposes of this report, we continue to refer to this entity as the IUE.

⁹The splinter unions include the International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Michigan Regional Council of Carpenters, Local 687 and Interior Systems, Local 1045; International Brotherhood of Painters and Allied Trades of the United States and Canada, Sign & Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar & Hotel Workers.

¹⁰The top-up agreements were originally set to expire in October 2007. In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU.

¹¹Failing entities choose to go through Chapter 11 of the Bankruptcy Code when they hope to reorganize and stay in business rather than liquidate and go out of business. 11 U.S.C. §§ 1101-1174.

Financing Program (AIFP).¹² As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry and its staff. On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the company's assets to a new entity ("new GM").¹³ After the sale of the assets in July 2009, new GM began operating with substantially less debt and Treasury received 60.8 percent equity and \$2.1 billion in preferred stock in the new GM, and a \$6.7 billion GM debt obligation.

Soon after, PBGC terminated Delphi's six DB plans (Delphi having acquired four more since the spin-off from GM), effective July 31, 2009, with almost 70,000 participants (see table 1). According to PBGC, as of the termination date, the Delphi plans were underfunded by approximately \$7.2 billion, of which PBGC insurance would cover an estimated \$6.0 billion. In October 2009, after 4 years in bankruptcy, Delphi completed its reorganization when Delphi Automotive LLP ("new" Delphi), a United Kingdom limited partnership, purchased most of Delphi's assets and GM purchased 4 other Delphi sites. "Old" Delphi became DPH Holdings Corp., an entity set up to sell or dispose of any remaining assets.

¹²In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343 div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to \$700 billion in troubled assets. § 115(a), 122 Stat. 3780. The Public-Private Investment Program Improvement and Oversight Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost \$1.3 billion, from \$700 billion to \$698.741 billion. Pub. L. No. 111-22, § 402, § 402(f), 123 Stat. 1656, 1658. EESA requires that the appropriate committees of Congress be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)).

¹³Throughout this report, in cases where a distinction is important, we refer to the pre-bankruptcy entity as "old GM" and the new one that purchased its operating assets as "new GM." Prior to bankruptcy, old GM's legal name was General Motors Corporation. The legal name of the new entity created in July 2009 was General Motors Company. As of October 19, 2009, General Motors Company became General Motors LLC.

Table 1: Terminated Delphi Defined Benefit Plans, as of July 31, 2009

Plan	Number of participants
Delphi Hourly-Rate Employees Pension Plan (hourly plan)	47,176
Delphi Retirement Program For Salaried Employees (salaried plan)	20,203
Packard-Hughes Interconnect Non-Bargaining Retirement Plan	1,383
ASEC Manufacturing Retirement Program	533
Packard-Hughes Interconnect Bargaining Retirement Plan	165
Delphi Mechatronic Systems Retirement Program	148

Source: Pension Benefit Guaranty Corporation (PBGC).

ERISA Guarantee Limits, Benefit Determination

PBGC was created as a government corporation by the Employee Retirement Income Security Act of 1974 (ERISA)¹⁴ to help insure the retirement income of U.S. workers with private-sector defined benefit plans. Under PBGC's single-employer insurance program, if a company's pension plan has inadequate funds to pay all promised benefits, plan sponsors meeting certain criteria can seek to terminate a plan through a "distress" termination.¹⁵ Under certain circumstances, PBGC may also decide to terminate an underfunded plan.¹⁶ In all these situations, PBGC is generally appointed trustee of the plan, as provided under ERISA, and assumes responsibility for paying benefits to the participants.

PBGC pays participants' benefits only up to certain limits set forth by ERISA and related regulations. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or

¹⁴Pub. L. No. 93-406, 88 Stat. 829 (codified, as amended, at 29 U.S.C. §§ 1001-1461).

¹⁵At least one of the following criteria must be present in order for PBGC to approve a distress termination: (1) liquidation in bankruptcy (Chapter 7) or insolvency proceedings; (2) reorganization in bankruptcy (Chapter 11); (3) inability to pay debts while in business without terminating a plan; or (4) unreasonably burdensome pension costs caused solely by a decline in workers covered by the plan. 29 U.S.C. § 1341(c)(2)(B).

¹⁶29 U.S.C. § 1342(a).

in full. These guarantee limits include the phase-in limit, the accrued-at-normal limit, and the maximum limit, as illustrated in table 2.¹⁷

Table 2: Types of Guaranteed Benefit Limits under ERISA

Maximum limit ^a	Phase-in limit ^b	Accrued-at-normal limit ^c
<ul style="list-style-type: none"> The guaranteed benefit cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. In 2009 (the year Delphi's plans were terminated), the maximum was \$54,000 per year for a person retiring at age 65 and with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 	<ul style="list-style-type: none"> The guaranteed benefit cannot include any benefit increase implemented through a plan amendment that was made within 1 year of the date of the plan termination. For benefit improvements that became effective more than 1 year but less than 5 years prior to the plan's termination, the guaranteed amount is the larger of 20 percent of the benefit increase or \$20 per month of the increase for each full year the increase was in effect. 	<ul style="list-style-type: none"> The monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. The portion of any combined early retirement benefit and supplemental benefit that exceeds the normal retirement age straight life annuity is not guaranteed.

Source: ERISA, PBGC's implementing regulations, and related documents.

^a29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2011).

^b29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2011).

^c29 C.F.R. § 4022.21 (2011).

Determining participants' benefit amounts following plan termination is a complex process. It begins with PBGC gathering extensive data on plans and individuals' work and personnel histories, and determining who is eligible for benefits under a plan, which can be more complicated if the company or plan has a history of mergers or elaborate structure or is missing data. It requires understanding plan provisions that vary from plan to plan and can be voluminous, applying the ERISA guarantee limits to each individual's benefit, valuing plan assets and liabilities, and determining which participants may receive additional benefits from any assets PBGC may recover from the sponsor. Final determination of benefits can take years, especially in a large, complex plan.¹⁸ If the participant is already retired, or retires before the process is complete,

¹⁷For more details on how these limits affected Delphi participant benefits, see appendix II.

¹⁸For more information on PBGC benefit determination, see GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments* (GAO-09-716; Washington, D.C.: Aug. 2009).

PBGC makes payments to the retiree initially based on an estimate of the final benefit amount. Once the process is complete, PBGC notifies each participant of the final benefit amount through a "benefit determination letter."

PBGC Finances and Governance

As of September 30, 2011, PBGC insured the benefits of about 44 million workers and retirees in more than 27,000 private DB plans. PBGC receives no funds from general tax revenue and is financed by premiums paid by DB plan sponsors, investment income, and assets that PBGC acquires when it assumes control of a plan.¹⁹ As of the end of fiscal year 2011, PBGC had terminated and trustee a total of 4,300 plans, and its net accumulated financial deficit totaled \$26 billion.²⁰ Additionally, at fiscal year-end, PBGC's estimate of total plan underfunding in plans sponsored by financially risky single-employer program companies totaled approximately \$227 billion, up significantly from \$170 billion the year before.

PBGC is governed by a three-member board of directors consisting of the Secretaries of the Treasury, Labor, and Commerce, who are responsible for establishing and overseeing the policies of the agency.²¹ According to PBGC, PBGC's director is responsible for managing PBGC's day-to-day operations, including, according to PBGC, such decisions as whether and when to terminate particular pension plans.²² We designated PBGC's single-employer pension insurance program as "high risk" in 2003, including it on our list of major programs that need urgent attention and transformation.²³ In 2007 and 2008, we reported that PBGC's board had

¹⁹29 U.S.C. § 1305.

²⁰PBGC's net accumulated financial deficit equals the total liabilities of the single employer program and the financial assistance unlikely to be repaid from the multiemployer program, less total assets in both programs.

²¹29 U.S.C. § 1302(d) and (f) and 29 C.F.R. § 4002.3 (2011).

²²ERISA specifies that in carrying out PBGC's functions, PBGC is to be administered by its director. 29 U.S.C. § 1302(a).

²³GAO, *Pension Benefit Guaranty Corporation Single-Employer Insurance Program: Long-Term Vulnerabilities Warrant 'High Risk' Designation*, GAO-03-1050SP (Washington, D.C.: July 2003).

limited time and resources to fulfill its responsibilities.²⁴ The program, along with PBGC's other insurance program, remains high risk due to an ongoing threat of losses from the terminations of underfunded plans.

Treasury's Multiple Roles

In previous reports, we also have examined the challenges posed to Treasury due to its multiple roles as a private pension regulator²⁵ and a GM shareholder, as well as having its Secretary serve on the PBGC board.²⁶ In its role on PBGC's board and as a pension regulator, Treasury has an interest in protecting the viability of private defined benefit pension plans and the retirement incomes of plan participants. But as a GM shareholder, Treasury has an interest in the financial well-being of GM. Recognizing the potential for interested parties to perceive possible conflicts, we reported that Treasury has taken several steps to mitigate this risk. For example, the department adopted core principles to guide its oversight of its investments under TARP and limit its involvement in day-to-day operations of companies. The department also has taken steps to establish a protective barrier between Treasury officials who make policy-related decisions with respect to investments in the automakers and the Treasury officials who are responsible for regulating pensions or overseeing the operations of PBGC. Nevertheless, we noted that the tensions inherent in Treasury's multiple roles remained.²⁷ In one previous report, we concluded that Treasury's investment in the auto companies created an enhanced need for transparency, and we recommended that

²⁴GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, GAO-07-808 (Washington, D.C.: July 2007); GAO, *Pension Benefit Guaranty Corporation: Need for Improved Oversight Persists*, GAO-08-1062 (Washington, D.C.: September 2008).

²⁵The Internal Revenue Service (IRS), within Treasury, oversees the tax qualified status of pension plans. 26 U.S.C. § 401(a).

²⁶See GAO, *Troubled Asset Relief Program: Automaker Pension Funding and Multiple Federal Roles Pose Challenges for the Future*, GAO-10-492, (Washington, D.C.: April 6, 2010); GAO, *Troubled Asset Relief Program: The U.S. Government Role as Shareholder in AIG, Citigroup, Chrysler, and General Motors and Preliminary Views on its Investment Management Activities*, GAO-10-325T (Washington, D.C.: Dec. 16, 2009); GAO, *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-296 (Washington, D.C.: Jan. 30, 2009); and GAO, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Accountability, Integrity, and Transparency*, GAO-09-161 (Washington, D.C.: Dec. 2, 2008).

²⁷For more on this topic, see GAO-10-492, pp. 42-45.

Treasury should regularly communicate to Congress about TARP activities to ensure accountability and provide added assurances that the taxpayers' investment is being appropriately safeguarded.²⁸ In a subsequent report, we reiterated this recommendation, and noted that by providing a more complete picture of the companies' financial performance, Treasury also could help mitigate potential or perceived tensions in its multiple roles.²⁹ Although Treasury had initially expressed concerns about disclosing proprietary information in a competitive market, it agreed to provide information on its oversight of the companies' performance that balances the need for transparency with the need to protect certain proprietary business information.³⁰

Threat of Increased Losses Led PBGC to Terminate Delphi Pension Plans

PBGC's decision to terminate the Delphi DB plans was precipitated by Delphi's inability to fund or maintain its plans and by the threat of increased losses from Delphi's impending loan default and possible liquidation. Treasury, as GM's primary lender in bankruptcy, played a significant role in helping GM resolve the Delphi bankruptcy to arrive at the "best resolution" from GM's perspective.³¹ However, with regard to GM's decisions regarding the assumption of Delphi's plans and top-up agreements, Treasury played an advisory role only, according to GM and Treasury officials. Similarly, according to PBGC officials, PBGC independently decided to terminate the Delphi plans. The documents we reviewed, including GM and Delphi SEC filings and PBGC internal records, are consistent with these statements.

²⁸GAO, *Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, GAO-10-151 (Washington, D.C.: Nov. 2, 2009). Specifically, we recommended that Treasury report to Congress on how it planned to assess and monitor GM's and Chrysler's performance to help ensure the companies are on track to repay their loans and to return to profitability.

²⁹GAO-10-492.

³⁰Because of Treasury's concerns about disclosing proprietary information in a competitive market, Treasury responded to our recommendation by providing GAO, as a congressional oversight body, with information on how it was using sensitive business information to oversee the companies' performance. This approach was consistent with our recommendation that noted the need for transparency to be balanced with protecting certain propriety information.

³¹Deposition of Matthew Feldman, *Black v. PBGC*, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

PBGC Initially Focused on
Delphi or Another
Company Continuing the
Plans

PBGC officials said the agency would have preferred to have Delphi emerge from bankruptcy and continue to sponsor the plans rather than terminate them. Delphi had announced in March 2006 that a key objective in restructuring was to continue to sponsor both the hourly and salaried DB plans. Therefore, PBGC's activities were focused on allowing the plans to continue after Delphi exited bankruptcy and having a reorganized Delphi continue to fund the plans. While PBGC has authority under ERISA to involuntarily terminate a plan that fails to meet certain conditions,³² PBGC officials said that they hoped that avoiding termination would save both the agency and plan participants from potential losses from unfunded plan benefits.

The vision was not realized, however. The Delphi bankruptcy court confirmed Delphi's reorganization plan in January 2008, but on April 4, 2008, Delphi's investors retracted an offer that would have executed the plan and prevented the termination of its pension plans. Delphi also negotiated with GM, Delphi's former parent company, to assume Delphi's hourly plan, but these efforts were only partially successful. Under a change to an agreement initially negotiated between the companies in 2007, GM would assume the hourly plan in two phases; this would reduce Delphi's overall pension liabilities and make it more attractive to investors, while Delphi would continue sponsoring the salaried plan. After making some changes to the agreement, the first phase occurred in September 2008, transferring approximately \$2.1 billion in net liabilities from Delphi to GM. However, the second phase, in which GM would have absorbed substantially all of the remaining hourly plan liabilities, was conditional on Delphi successfully reorganizing.³³ In July 2009, after Delphi's attempts to reorganize failed, and with GM in its own bankruptcy, GM decided not to take on the remaining liabilities of Delphi's hourly plan. According to representatives of GM, after it was clear Delphi would not be able to reorganize, Delphi asked GM to take the salaried plan as well; however, GM declined.

³²Under ERISA, PBGC has authority to involuntarily terminate a plan that fails to meet minimum funding standards, will be unable to pay benefits due, failed to make quarterly contributions, or is reasonably expected to increase long term losses to PBGC if not terminated. 29 U.S.C. § 1342(a).

³³Delphi also agreed that the reorganized Delphi would provide GM with up to a \$2.055 billion administrative claim.

Lack of a Willing Sponsor
and the Risk of Additional
Losses Prompted PBGC to
Terminate

By 2009, PBGC determined that the economic decline and the collapse of the U.S. auto industry had diminished the likelihood that Delphi, GM, or another company would be able and willing to sponsor Delphi's plans. Moreover, it became apparent to PBGC officials that PBGC's potential losses could grow if it waited. Delphi net sales, already on a steady decline since 2003, had fallen 50 percent between 2008 and 2009, and funding for Delphi's plans had been eroding since 2007.³⁴ Delphi's largest customer, GM, amidst the lowest per-capita vehicle sales in 50 years, requested financial assistance from the U.S. government in December 2008. These conditions diminished the likelihood that Delphi would be able to continue operating and maintain its pension plans.

According to PBGC officials, the likelihood that Delphi would default on its debtor-in-possession (DIP) loan, and the potential impact on PBGC recoveries, moved them in April 2009 to decide to terminate the Delphi plans. Delphi's SEC filing that month stated that Delphi's short-term loan from its DIP lenders was due to expire, and that extension of the loan was conditional on Delphi (1) delivering the lenders terms, agreed to by Treasury and GM; and (2) finalizing GM's contributions to the resolution of Delphi's bankruptcy. The filing noted that failure to meet these terms would trigger a requirement that Delphi make a \$117 million repayment obligation on April 20. With Delphi unlikely to make this payment, it was possible that the lenders would foreclose on Delphi assets held as collateral. Foreclosure would have threatened PBGC's ability to recover Delphi Corporation assets on behalf of its plans, which would in turn have increased PBGC's and Delphi plan participant losses from plan termination. With a deteriorating auto industry and no foreseeable sponsor for the Delphi plans, and with potential recoveries threatened, PBGC concluded that the agency's long-run loss would increase if the plans were not terminated.

Ultimately, however, PBGC postponed termination. The urgency to terminate in April, was reduced after Delphi's DIP lenders offered PBGC a 5-business day notice prior to foreclosing, fearing, according to PBGC,

³⁴Different estimates, done on different dates and using different methodologies intended for different purposes, measured varying degrees of funding in Delphi's salaried plan. According to Delphi, the salaried plan was 53.7 percent funded as of year-end 2008 and was still 53.7 percent funded as of the date of plan termination on July 31, 2009. DSRA, based on an actuarial evaluation by Watson Wyatt, reported the salaried plan was 85.6 percent funded as of October 1, 2008. PBGC measured salaried plan funding at 48 percent as of termination on July 31, 2009.

that termination of Delphi's pension plans would reduce Delphi's value. In a June 1, 2009, press release, Delphi stated that the hourly plan would "be addressed" by GM and that PBGC "may" terminate the salaried and four smaller plans. According to Treasury, PBGC later confirmed that GM was not an alternative sponsor for the Delphi hourly plan. On June 30, 2009, a meeting took place between PBGC and Treasury to discuss the Delphi plans; according to PBGC, Treasury informed PBGC officials that GM would not assume the remaining Delphi hourly pension liabilities. Finally, on July 15, 2009, Delphi's DIP lenders gave PBGC a notice of foreclosure under the April agreement. With no willing and viable sponsor, PBGC officials expected the plans would be abandoned with no sponsor to pay benefits as they came due. On July 22, 2009, PBGC announced that Delphi's plans would be terminated. The termination date was set to be July 31, 2009, and PBGC officially became the trustee of the plans on August 10, 2009. Delphi's claim was the second largest in PBGC's history, following United Airlines as the largest.

Our examination of PBGC termination decisions for nine of its ten largest insurance claims (Delphi's being the tenth) shows the agency making assessments similar to those it made for the Delphi pension plans. In each case, we found that PBGC evaluated the future viability of the plans when making such decisions. For example, PBGC considered the likelihood of the company securing investment or more generally exiting bankruptcy as the plan's sponsor, or, alternatively, of an asset purchaser assuming the plan. PBGC also assessed future plan funding. For example, staff recommended termination of Weirton Steel's plan expecting that plan funding would soon decline. Weirton Steel, pursuing two tracks to exit bankruptcy, both of which assumed plan termination, filed an emergency motion seeking court approval to lay off 175 management employees, which would have triggered additional benefits totaling up to \$270 million. PBGC expected the layoffs to significantly reduce the funding of Weirton's already underfunded pension plan and terminated the pension plan before the plan's funding was affected.

Treasury Was Involved as GM Determined How Best to Resolve the Delphi Bankruptcy

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interests. Treasury's guiding principle was to see the bankruptcy resolved with the least possible amount of investment by GM while still preserving GM's supply chain. However, with regard to GM decisions about the Delphi pension plans—their sponsorship and the decision to honor existing top-up agreements—court filings and statements from GM and Treasury officials support that Treasury deferred to GM's business judgment.

Decisions Related to Plan Sponsorship

According to Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the Delphi hourly plan. With regard to the top-ups, Treasury officials said that while Treasury did not explicitly approve or disprove of GM's agreement to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons to enter into such agreement. Similarly, PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent of input from Treasury.

From Treasury's initial discussions about Delphi's pensions with PBGC in April 2009 until after GM's bankruptcy filing on June 1, 2009, Treasury had anticipated that Delphi's salaried pension plan would be terminated by PBGC, but that GM would assume the remaining portion of Delphi's hourly plan, as called for in phase 2 of the September 2008 agreement. With respect to the salaried plan, according to Treasury officials, Treasury agreed with GM's rationale not to assume the now underfunded Delphi salaried plan, since that plan had been fully funded when GM transferred it to Delphi in 1999.³⁵ With respect to the hourly plan, however, a Treasury official's deposition indicates that Treasury thought it was reasonable for GM to assume the Delphi hourly plan for UAW-represented workers, given the UAW's continuing role with the new GM and the fact that the hourly plan, which covered both the UAW and other union-represented workers, had not been fully funded at the time the plan was transferred from GM to Delphi in 1999.³⁶

According to our review of the records, Treasury was involved in discussions with PBGC and GM prior to GM's bankruptcy filing, on how to address Delphi's pensions. Specifically, according to the Treasury official's deposition, initial discussions with PBGC, GM, and Treasury in

³⁵According to data provided by Delphi, based on a fair market valuation of plan assets the Delphi salaried plan was 108.8 percent funded as of year-end 1998 and 122.7 percent funded as of year-end 1999. ("Fully funded" means that as of a particular date, plan assets equal or exceed the relevant measure of plan obligations.) However, for the typical pension plan invested in a mix of stocks and bonds, measures of funded status can be highly volatile, so that a plan that is fully funded on one date could be substantially less than fully funded on a subsequent date.

³⁶According to the deposition, Treasury was not focused on the other unions' plans at this time but was concerned about UAW because of UAW's role for new GM. According to data from Delphi, the hourly plan was 69.1 percent funded as of year-end 1999, measuring assets on a fair market value basis.

April and May 2009 centered on trying to reach an agreement under which, among other things, the Delphi salaried plan would be terminated and GM would assume the hourly pension plan. According to the deposition, as of May 28, 2009, there was a general agreement with PBGC that, if GM had been willing to take on the hourly plan, the salaried plan would be terminated and PBGC would have an administrative claim on the Delphi bankruptcy. In exchange, PBGC would release the liens on Delphi's foreign assets and have an unsecured claim for an undefined amount. According to PBGC officials, there were discussions in April and May 2009 around the topic of how to deal with Delphi's pension plans in light of the collapse of the auto market and growing concerns about Delphi's inability to maintain its pension plans and imminent liquidation, as well as GM's own financial difficulties and impending bankruptcy. However, PBGC officials told us that at this time, they had not reached any agreement with GM or Delphi regarding the future of the Delphi pension plans or settlement of PBGC liens and other claims that might arise from the termination of one or more of Delphi's pension plans.

According to court filings, GM officials first informed Treasury that they had concerns about taking on the hourly plan and had not built the cost of doing so into its restructuring plan on June 3, 2009—shortly after GM's bankruptcy filing. In June 2009, GM developed and provided Treasury with an assessment of the costs of Delphi's pensions, which explained that the restructuring plan did not assume the transfer of remaining Delphi hourly or salaried plans. The assessment also stated that, subject to certain conditions, GM was obligated to absorb the second transfer of Delphi's hourly plan but did not expect Delphi to meet those conditions.³⁷ GM also noted that it was not obligated to absorb Delphi's salaried plans. After reviewing GM's calculations and engaging in discussions with GM's pension team, Treasury agreed with GM's assessment that taking on the Delphi hourly plan was a "3 billion dollar liability that General Motors could not afford."³⁸ In a legal brief, Treasury has asserted that the department

³⁷The assessment added that the since the first transfer in September 2008, the unfunded liability for the remainder of Delphi's hourly plan had increased from \$1.5 billion to approximately \$3.2 to 3.5 billion as of March 31, 2009.

³⁸Upon termination in July 2009, PBGC calculated that the hourly plan underfunding totaled \$4.4 billion.

did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions.³⁹

According to PBGC, Treasury did not play an active role in PBGC's decision to terminate the Delphi plans, although the Secretary of the Treasury is one of PBGC's three PBGC board members. Specifically, according to PBGC officials, PBGC's director informed the board of PBGC's decision to seek termination of the Delphi plans, gave the board advance notice of its subsequent implementation of that decision, and routinely kept the board informed of the agency's actions in the Delphi bankruptcy case, consistent with PBGC's practice in other large cases. The law gives the board responsibility to establish and oversee PBGC policies,⁴⁰ but according to PBGC, the board decides broad policy issues that may arise from cases without getting involved directly in those cases. For their part, Treasury officials acknowledged that the department had multiple roles in this process by virtue of its roles in PBGC oversight and in managing the U.S. investment in new GM, but noted that Treasury does not communicate with PBGC about its GM investment activities.⁴¹ Moreover, in response to questions from Congress, the Treasury Secretary stated that Treasury did not make the decision to terminate Delphi's pension plans.⁴²

Decisions Related to Top-Up Agreements

Although GM decided not to assume the second installment of Delphi's hourly plan, it did decide to honor existing top-up agreements for commercial reasons that Treasury found reasonable. As noted in a Treasury official's deposition, during GM's bankruptcy process, GM was prepared to honor the obligation of providing top-ups to Delphi UAW retirees, while the situation was less clear regarding comparable agreements with IUE and USWA. GM officials told us that the company agreed to honor the top-up agreement with the UAW during its restructuring because of its dependence on the union, whose members

³⁹Mot. Def. U.S. Dep't Treas., Pres. Task Force on Auto Indus., Timothy F. Geithner, Steven L. Rattner, Ron A. Bloom, Dis., or Alt. Summ. J. at 24, *Black v. PBGC*, No. 2:09-cv-13616-AJT-DAS (E.D. Mich. Feb. 16, 2010).

⁴⁰29 U.S.C. § 1302(d) and (f).

⁴¹GAO-10-492.

⁴²The Federal Bailout of AIG: Hearing before the House Committee on Oversight and Government Reform, 111th Cong. (2010) (answers to questions for the record from Timothy Geithner, Secretary of the Treasury).

made up a substantial part of GM's workforce. GM agreed to provide top-ups to the Delphi UAW retirees as part of GM's master sale and purchase agreement, to which Treasury gave its approval.⁴³ The agreement did not include top-ups for IUE and USWA-represented employees, nor for the splinter unions or the salaried employees, who had no previous top-up agreements with GM.

While new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees, it did have reason to want to resolve Delphi's bankruptcy, given GM's reliance on Delphi for parts.⁴⁴ Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy. According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts

⁴³In re General Motors Corp., 407 B.R. 463, 481 (Bankr. S.D.N.Y., 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC, (2) assumption and assignment of related executory contracts, and (3) entry into UAW retiree settlement agreement). The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM.

⁴⁴According to a July 2009 declaration of a GM official, since the spin-off from GM, Delphi was GM's largest component parts supplier, accounting for approximately 11.3 percent of GM's North American purchases and 9.6 percent of GM's global purchases in 2008. Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain assets of Delphi Corp., (II) Related agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof, at 4, In re General Motors Corp., No. 09-50026 (Bankr. S.D.N.Y. July 8, 2009).

suppliers.”⁴⁵ According to a Treasury official’s deposition, Treasury was kept apprised of GM’s ongoing bargaining with IUE and USWA on a variety of issues, including the top-ups.⁴⁶ Additionally, according to Treasury officials, Treasury’s consent for transactions greater than \$100 million, which had been required prior to GM’s bankruptcy, was not required of new GM and therefore, was not required when the settlement agreement was signed, 2 months after new GM began operations. Negotiations resulted in an agreement, on September 10, 2009, between new GM, old GM, IUE, and USWA that, among other things, honored the top-ups to the retirees of Delphi who were represented by these unions and who were covered by the 1999 top-up agreements. According to the agreement, the parties entered into it after consideration of the factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues.

Although Treasury officials said that Treasury did not explicitly approve or disapprove of GM providing top-ups to the Delphi UAW, USWA, and IUE retirees, Treasury did subsequently comment on GM’s decision. In a legal brief, Treasury stated that GM had solid commercial reasons for providing the top-ups.⁴⁷ Specifically, Treasury stated that its aim in negotiating the details of GM’s reorganization plan was to ensure that new GM would assume only those liabilities of old GM that were “commercially

⁴⁵Declaration of Randall L. Pappal in Support of Debtors’ Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain assets of Delphi Corp., (II) Related agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof at 4, In re General Motors Corp., No.09-50026 (Bankr. S.D.N.Y. July 8, 2009). The declaration stated that Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts that are used in almost every GM product line in North America and identified several ways that a cessation of parts delivery by Delphi could affect GM, including that (1) most parts that Delphi manufactures for GM are not readily available from an alternate source, and while GM could accelerate efforts to resource Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be resourced and revalidation required would take at least several months to achieve; (2) because GM operates on a just-in-time inventory delivery system, GM plants relying on just-in-time shipments may run out of inventory of such parts and have to shut down within a matter of days, if Delphi ever ceased shipping even a small fraction of production parts to GM; and (3) the shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, significantly decrease GM’s revenues, and increase GM’s costs to expedite resourcing efforts.

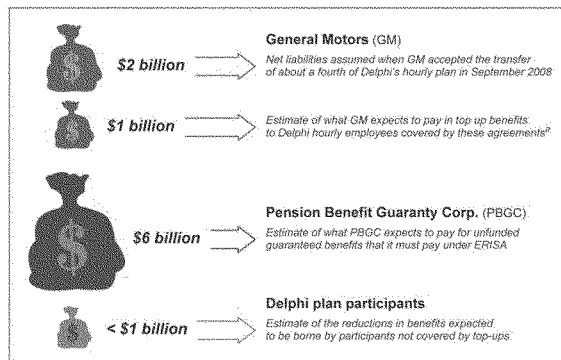
⁴⁶Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

⁴⁷Mot. Def. U.S. Dep’t Treas. at 28.

necessary” in order for new GM to operate. Treasury noted in the brief that because of new GM’s dependence on the UAW workforce and the costs, risks, and delays associated with litigating USWA’s and IUE’s claims related to the Delphi bankruptcy, new GM had solid commercial reasons to agree to provide the top-ups to the Delphi UAW, USWA, and IUE retirees. Additionally, Treasury officials noted that, unlike the hourly plan, the salaried plan was fully funded at the time GM transferred it to Delphi, and that because GM was never obligated to provide top-ups to the salaried or other retirees not represented by UAW, IUE, and USWA.

As a result of GM’s decisions to pay top-up benefits to those participants covered by the agreements and to take back a portion of the Delphi hourly plan in September 2008, GM will bear some of the costs of Delphi’s unfunded pension liabilities (see fig. 1). Retirees who experience benefit reductions that are not topped up by GM will also bear a portion of the cost through their reduced benefits. However, PBGC will bear the biggest burden—about \$6 billion in unfunded guaranteed benefits across all six of Delphi’s DB plans.

Figure 1: Who Is Bearing the Cost of Delphi Pension Plans' Unfunded Liabilities



Sources: GAO analysis of PBGC and GM data.

*GM estimated the cost for top-up benefits in December 2010. GM's top-up estimate is higher than PBGC's estimate for the hourly plan's total amount of unfunded nonguaranteed benefits because GM will pay some benefits not included in PBGC's calculations. For example, unlike PBGC's estimate, GM's estimate includes obligations to provide up to 7 years of accrued benefits for certain employees covered under the top-up agreement who were not eligible to retire as of the plan termination date, but who became (or will become) eligible to retire under a normal or voluntary retirement during this 7-year window. In addition, GM's estimate includes obligations to provide covered employees who retired under the mutually satisfactory retirement (MSR) option, for which GM will pay the difference between the PBGC deferred vested pension benefit and the Delphi MSR benefit amount.

PBGC Pursued Claims on Delphi's Assets, Resulting in between \$600 Million and \$650 Million in Recoveries

PBGC took actions during Delphi's bankruptcy to protect plan funding and recover assets from Delphi, eventually recovering between \$600 and \$650 million against the \$7.2 billion in total unfunded plan benefits. PBGC negotiated value for its claims and liens with Delphi and GM, releasing them for a settlement generating cash and other recoveries. The process for distributing these recoveries is laid out in ERISA,⁴⁸ PBGC regulations,⁴⁹ policies, and procedures. Because of the large gap between plan assets and liabilities in Delphi's plans relative to PBGC's recoveries, its recoveries are expected to have only a modest impact on the benefits of only some participants.

PBGC Pursued Statutory Claims Arising against Delphi's Assets

Upon the termination and trusteeship of an underfunded single-employer plan, PBGC generally takes control of all plan assets, but PBGC also has authority to recover additional money from company assets outside of its pension plans. ERISA provides that when underfunded single-employer plan is terminated, the plan sponsor and other entities under common control (the controlled group)⁵⁰ are "jointly and severally"⁵¹ liable to PBGC for any unpaid premiums⁵² and the amount of any unfunded benefit liability.⁵³ In addition, a plan sponsor is required under ERISA to periodically make certain minimum contributions to its plan,⁵⁴ and—along with other members of the controlled group—is liable to a plan for any required contributions not made by the date due.⁵⁵

⁴⁸29 U.S.C. § 1344.

⁴⁹See 29 C.F.R. pt. 4044 (2011).

⁵⁰The controlled group consists of the plan sponsor and other entities under common control, determined generally as prescribed under 26 U.S.C. § 1563(a), 29 U.S.C. § 1301(a)(14), and 26 C.F.R. § 1.414(b)-1 (2011).

⁵¹Joint and several liability is when a creditor may sue one or more of the parties separately, or sue all of them.

⁵²29 U.S.C. § 1307(c).

⁵³29 U.S.C. § 1362(a).

⁵⁴29 U.S.C. §§ 1082 and 1083.

⁵⁵29 U.S.C. § 1082(b)(1) and (2).

ERISA imposes a lien that can only be officially filed ("perfected")⁵⁶ by PBGC on behalf of a plan in the amount of the aggregate missed contribution payments, when the total of those missed payments exceeds \$1 million.⁵⁷ PBGC first filed liens on behalf of the Delphi plans, for missed required contributions of \$75,177,000, in March 2006.⁵⁸ From 2006 to 2009, PBGC filed liens on behalf of the Delphi plans in response to Delphi's failing to contribute to its plans in the amounts required by statutory minimum funding standards. As of the termination of the Delphi plans in July 2009, PBGC held \$195.9 million in perfected liens on behalf of the salaried plan and a combined \$9.2 million on behalf of Delphi's smaller pension plans, for a total of \$205 million in secured claims. PBGC officials told us they filed these liens for missed contributions only on the assets of Delphi's foreign subsidiaries because Delphi's domestic assets were shielded from PBGC liens by the automatic stay in Delphi's bankruptcy.⁵⁹ In addition, prior to the transfer of \$2.1 billion in net liabilities to GM's hourly plan, PBGC also held liens on behalf of Delphi's hourly plan, reflecting missed required contributions to that plan. However, according to PBGC, the transfer of a portion of Delphi's hourly plan in September 2008 eliminated the hourly plan's accumulated funding deficiency, eliminating the legal basis for any liens for missed contributions up to that point in time. Following the transfer, the contribution due to Delphi's hourly plan for the final plan year was \$194 million. However, according to PBGC officials, because no quarterly contributions were due, that final \$194 million catch-up payment was not due until June 15, 2010, well after the plan was terminated, and therefore, a lien did not arise.

⁵⁶A lien is perfected by filing it as prescribed in the relevant jurisdiction. Perfecting a lien provides constructive notice of its existence to all third parties and gives it priority over any later-perfected liens. In a bankruptcy, a properly perfected lien becomes a secured claim; an unperfected lien is treated the same as a general unsecured claims. All creditors with secured claims must receive payment in full (or up to the total value of their security) before those with general unsecured claims receive any payment at all.

⁵⁷29 U.S.C. § 1083(k).

⁵⁸The Internal Revenue Code requires single employer plan sponsors to make a certain amount of periodic contributions to their DB plans and maintain minimum funding standards. 26 U.S.C. § 412.

⁵⁹Filing for bankruptcy operates as an automatic stay barring anyone from, among other things, perfecting or enforcing liens against the filing party. 11 U.S.C. § 362(a)(4).

ERISA also establishes a lien on behalf of PBGC in the amount of any unfunded benefit liability as of the plan's termination date, up to an amount not in excess of 30 percent of the controlled group's net worth.⁶⁰ However, when a firm is in bankruptcy—as was the case with Delphi—PBGC is barred from perfecting a lien under this provision. According to PBGC officials, although liens could have arisen under this provision on Delphi's foreign controlled group members after the Delphi plans were terminated, they concluded that PBGC could maximize recoveries by achieving a settlement prior to termination, in part because they were concerned about the potential breakup of Delphi's controlled group and the impact this would have on recoveries.

PBGC Negotiated the
Value of Its Claims with
Delphi and GM

According to information from PBGC, in May 2009, PBGC, Delphi, GM and Treasury met to discuss the status of negotiations surrounding Delphi's bankruptcy, including the pension plans. Treasury participated in those negotiations as the facilitator between GM and PBGC regarding Delphi pension issues.⁶¹ According to a GM official's court declaration, neither GM nor presumably any other potential purchaser was willing to purchase Delphi's assets while they were subject to the threat of liens PBGC held on behalf of the underfunded Delphi plans. Therefore, GM's obligations to Delphi were conditioned upon PBGC agreeing to remove these liens on Delphi's assets. During the negotiations, GM recognized that it might be necessary for it to make a cash payment to the PBGC or assume some portion of Delphi's unfunded pension liabilities. GM noted it would only make such a payment if necessary to help Delphi's reorganization and the payment was clearly outweighed by the benefits GM would receive from Delphi's reorganization. GM also noted that any contributions under an agreement with PBGC would be subject to Treasury's consent if funds in a restricted escrow account, over which Treasury held approval rights, would be used for such contributions.⁶²

⁶⁰29 U.S.C. § 1368.

⁶¹Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

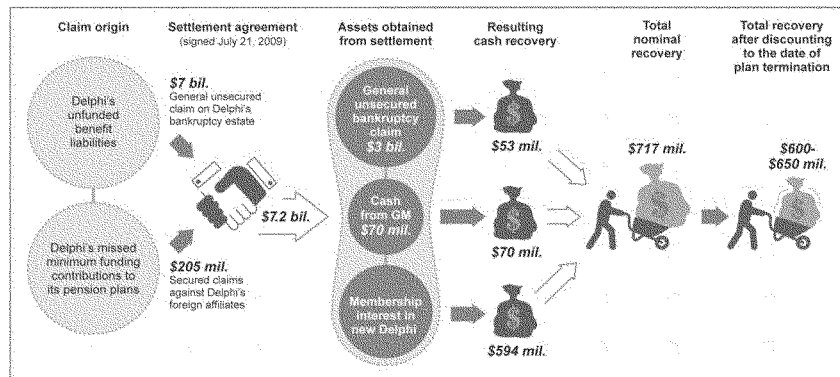
⁶²Of the \$30.1 billion that Treasury provided to GM at its bankruptcy filing, \$16.4 billion was held in escrow to be accessed by GM on an as-needed basis with the consent of Treasury. In October 2009, Treasury approved GM's request for approximately \$3 billion from this account for transactions related to the resolution of the Delphi bankruptcy. According to GM, this amount included the \$70 million payment that GM made as part of its agreement with PBGC.

PBGC and Delphi reached an agreement on July 21, 2009, and PBGC announced it was terminating Delphi's plans the following day. PBGC received a membership interest in new Delphi, which gave it rights to some of the initial profit distributions from post-bankruptcy Delphi. PBGC actuaries valued the interest at \$500 to \$600 million. GM also paid PBGC \$70 million in cash. In exchange, PBGC released \$205 million in liens on Delphi's foreign assets (which PBGC considered worth substantial negotiating leverage in maximizing recoveries) and released Delphi controlled group members from any potential future PBGC claim that might arise against them under any circumstances. PBGC also settled with Delphi and received a \$3 billion general unsecured claim in Delphi's bankruptcy in exchange for releasing all of its other claims in the case (see fig. 2).

In March 2011, PBGC redeemed its membership interest from new Delphi for \$594 million. Soon after, in April 2011, PBGC sold its remaining \$3 billion general unsecured claim against old Delphi to Credit Suisse Loan Funding, LLC for \$53 million—roughly 2 cents on the dollar. Together, PBGC's recoveries of Delphi Corporation assets totaled approximately \$717 million—or an estimated \$600 million to \$650 million when discounted to its value as of the date of plan termination, as required under ERISA.⁶³ Based on these values, recovery ratios for Delphi's hourly and salaried plans are estimated to ultimately be just over 6 percent.

⁶³29 U.S.C. § 1362(b)(1).

Figure 2: PBGC Asset Recoveries in Delphi's Bankruptcy



Sources: PBGC and court documents.

The recovery ratios in Delphi's case are comparable to those we found in the nine other companies on PBGC's top-10 list of largest claims, although the circumstances surrounding each recovery process are unique. As it did in Delphi's case, PBGC had claims on non-debtor corporate subsidiaries in recovery efforts against three other large terminations we examined: Weirton Steel, Bethlehem Steel, and National Steel. Also, as it did with Delphi, PBGC entered into a negotiated settlement agreement with eight of the other nine companies on PBGC's top-10 list of largest claims.⁶⁴

We reviewed documents for the 29 plans across these nine firms, and found that the recovery ratios ranged from 0 percent to 38.5 percent.

⁶⁴The companies we reviewed, 5 airlines and 4 steel companies and Delphi, are single-employer pension plan firms with the 10 highest claims on PBGC from 1975 through 2010. Among them they sponsored a total of 35 DB plans. See appendix III for a summary of PBGC recoveries for terminated plans of these firms. In addition to these terminations we also reviewed the terminations of the Collins & Aikman Corporation and Hayes Lemmerz International, Inc., because as it did in Delphi's case, PBGC filed liens on foreign subsidiaries of those companies.

Recovery ratios appeared to vary by industry for the other nine companies, all of which are airlines or steel companies. Of the 13 terminated steel plans we reviewed, 9 had PBGC recovery ratios less than 3 percent, and of the 11 large airline plans we reviewed, 8 had recovery ratios over 8 percent. We also found that PBGC generally achieved higher recovery ratios for plans of companies that were in a position to emerge from bankruptcy after their plans' termination than those of companies positioned to sell their assets or liquidate.

We also sought to compare PBGC's recovery efforts against Delphi with other terminations involving companies with foreign assets. In response to our request for cases involving foreign liens, PBGC did not identify any of the firms involving their 10 largest claims,⁶⁵ but instead provided two other case examples. In one case, Hayes Lemmerz International, Inc., PBGC entered into a settlement (along with the other creditors) for claims on the company's foreign subsidiaries to recover funds on behalf of the company's pension plan. PBGC's claims in this case total \$113.1 million, and expected recoveries total \$21.7 million, about 19 cents per dollar claimed. In the other case, Collins & Aikman Corporation, the company's Canadian and Mexican subsidiaries represented a potentially large portion of the net worth in the controlled group. As in Delphi's case, PBGC terminated the Collins & Aikman's pension plan when it expected that these foreign assets would leave the controlled group and reduce PBGC recoveries. PBGC's claims in this case total \$225.2 million, and recoveries total \$8.7 million, a recovery ratio of less than 4 percent.⁶⁶

Recoveries Will Result in Minimal Benefit Increases beyond Guaranteed Benefit Amounts

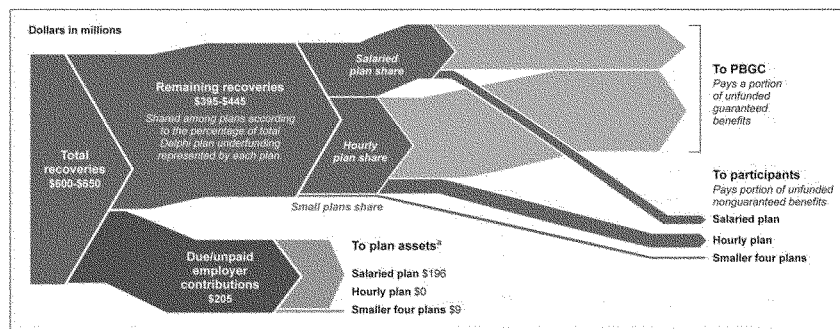
A fraction of PBGC's \$600 million to \$650 million in recoveries will go to increase participant benefits beyond the level already guaranteed by PBGC, with the rest offsetting PBGC's payment of unfunded guaranteed benefits. Recoveries of due and unpaid employer contributions are allocated back to the pension plans to which they are owed. Based on the liens for missed contributions to the Delphi plans, PBGC will allocate

⁶⁵One of the companies on the top-10 list, Delta Airlines, did have foreign subsidiaries in its controlled group and not in bankruptcy, but according to PBGC officials, these subsidiaries were relatively small and could not provide PBGC substantial recoveries. Therefore, PBGC did not file foreign liens in that case.

⁶⁶As others have noted, PBGC's authority to recover on liens abroad is not without some constraints. Allan E. Reznick and A. Owen Glist, Pension Benefit Guaranty Corp.—Controlled Group Claims Abroad, 235 N.Y. L.J. No. 33 (2006).

\$195.9 million of its recoveries to the salaried plan, and \$9.2 million to the smaller plans from its recoveries (see fig. 3).

Figure 3: Distribution of Asset Recoveries by PBGC in Delphi's Bankruptcy



Source: GAO analysis of PBGC documents, court documents, and interviews with PBGC officials.

^aPlan assets distributed to unfunded guaranteed and nonguaranteed benefits, but under different rules than asset recoveries.

The remaining recoveries, estimated to be between \$395 and \$445 million, are allocated among the plans proportionally according to each plan's percentage of total remaining unfunded benefit liabilities.⁶⁷ The money allocated to each plan is then split between PBGC (to offset its cost of paying unfunded guaranteed benefits) and participants (to pay a portion of unfunded benefits beyond ERISA's guarantee limits). For plans with more than \$20 million in unfunded benefit liabilities, as in the case of Delphi's hourly and salaried plans, the percentage of participants' nonguaranteed benefits PBGC pays depends on the percentage of the plans' unfunded benefit liability PBGC is able to recover.⁶⁸ Remaining

⁶⁷29 U.S.C. §§ 1322(c) and 1344(f).

⁶⁸29 U.S.C. § 1344(f)(2)(C). For plans with less than \$20 million in unfunded benefit liabilities, the split between PBGC and participant benefits is determined by PBGC's small plan recovery ratio, an average of PBGC's recoveries over a 5-year period (29 U.S.C. 1344(f)(2)(A)). In 2009, this ratio was set at 3.85 percent.

recoveries go to offset PBGC's loss for paying guaranteed benefits. With recoveries of about 6 percent of unfunded liabilities for both Delphi's hourly and salaried plans, PBGC would pay about 6 percent of all participant unfunded nonguaranteed plan benefits, which are those benefits funded neither by plan assets nor guaranteed by PBGC. PBGC officials said it is too early in the benefit determination process to develop an accurate estimate of total unfunded, non-guaranteed benefits, but at this point, PBGC expects that recoveries will slightly increase benefits for some participants across Delphi's plans.

**Many Delphi Retirees
Are Subject to Benefit
Reductions and Only
Certain Hourly
Retirees Are
Protected by Union
Agreements with GM**

The benefits provided by PBGC must comply with the limits on guaranteed benefits under ERISA, and as a result, the amount guaranteed and paid by PBGC to some Delphi retirees will be less than the amounts promised by Delphi. However, some Delphi hourly plan participants avoided these reductions because they were transferred into GM's plan prior to PBGC's termination of the Delphi plan. Some of the other hourly plan participants who will receive less from PBGC than the amount promised by Delphi will have their losses covered by GM because of top-up agreements originally negotiated when Delphi was spun off from GM. These participants will receive additional payments from GM resulting in their receiving, in total, their full promised benefits. But most Delphi employees are not covered by these top-up agreements—including about 40 percent of the participants in the hourly plan, and all the participants in the salaried and other four smaller plans. PBGC's data showed that, as a result of the ERISA limits, PBGC has had to reduce benefits for just under half of salaried and hourly plan participants already retired and receiving pension payments, according to information collected by DSRA.

**ERISA Limits Result in
Reductions in Benefits for
Many Retirees**

As of June 2011, after reviewing the benefits promised to and being paid to the vast majority of Delphi hourly and salaried participants already retired, PBGC data indicate that just under half required reductions in their estimated benefit in order to comply with ERISA limits (see table 3).⁶⁹ According to the data, 48 percent of hourly retirees and 45 percent of the salaried retirees had their estimated benefits reduced because of

⁶⁹When PBGC becomes trustee of a terminated plan, it pays participants already retired and receiving pension payments estimated benefits until it can determine the correct benefits participants should receive under ERISA.

guarantee limits.⁷⁰ Like those affected by other large terminations, Delphi participants who had retired early or had accrued higher benefits were likely to have their benefits reduced due to ERISA limits. For example, retirees in both plans frequently had benefit reductions because of ERISA's accrued-at-normal limit, which can eliminate or substantially reduce any early retirement supplemental benefits.⁷¹ Only salaried retirees had a high proportion of retirees receiving reductions because of ERISA's maximum limit, with 26 percent of them exceeding this limit compared with 2 percent of hourly retirees.⁷² Even after applying the ERISA limits, PBGC expects to pay about \$6 billion of the \$7.2 billion in unfunded benefits promised to Delphi participants, as these benefits fall under the limits and thus are guaranteed.

Table 3: Number and Percentage of Delphi Retirees Subject to Reductions in Estimated Benefits Due to ERISA Limits (as of June 1, 2011)

Delphi plan ^a	Number of participants	Number of participants with benefits reviewed by PBGC as of June 1, 2011 ^b	Number with reductions in benefits	Percent reviewed with reductions ^b	Percent reviewed with no reductions ^b
Hourly plan	47,176	28,051	13,368	48	52
Salaried plan	20,203	8,273	3,714	45	55

Source: GAO analysis of PBGC data.

^aIn addition to the hourly and salaried plans, Delphi also has four other small plans. (See appendix II for estimated benefit reductions for all Delphi plans.)

^bAccording to PBGC officials, as of June 2011, they had not yet reviewed the benefit amounts for about 2,000 of the 30,000 hourly plan participants already receiving payment, but had reviewed the benefit amounts for all other salaried plan participants already receiving payments. These rates are also subject to change as PBGC determines the impact of plan asset recoveries on retirees' benefits and as more workers retire and receive estimated reductions and final benefit determinations over the next year or more.

⁷⁰The proportion of Delphi retirees who have had their benefits reduced by each of ERISA's benefit limits as of June 2011 is provided in appendix II.

⁷¹Under ERISA, the accrued-at-normal limit permits little if any early retirement or supplemental benefits to be paid. It provides for benefits to be paid at the plan's normal retirement age, which is 65 years old, as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors). 29 C.F.R. § 4022.21 (2011).

⁷²ERISA's maximum limit guarantees payment of benefits up to a federal statutory maximum (29 U.S.C. § 1322(b)(3)), adjusted annually, based on the year the plan terminates. 29 C.F.R. § 4022.23 (2011). When Delphi's plans terminated in 2009, the maximum limit was \$54,000 per year for a person retiring at age 65 and with no survivor benefit. The maximum is actuarially lower for those retiring under age 65 or with a survivor benefit.

Based on PBGC's reviews as of June 2011, a higher proportion of Delphi retirees have been subject to the guarantee limits compared with retirees of most other large plans terminated and trustee by PBGC. While PBGC does not systematically track the number of participants affected by guaranteed benefit limits, a study it conducted in 2008 using a sample of large plans showed that ERISA benefit limits resulted in 16 percent of participants receiving reductions. It also found that the steel and airline plans, which tend to allow early retirement and have generous benefits, had a higher percentage of participants experiencing reductions, at 21 percent for steel plans and 22 percent for airline plans. Although certain plans for pilots have had 60 percent of participants receiving reductions, Delphi's current rates of 45 percent of salaried plan participants and 48 percent of hourly plan participants are higher than most. However, over time, the proportion of Delphi retirees with benefit reductions is likely to decline. According to PBGC, many participants from the salaried plan who were not eligible to retire as of the termination date were not entitled under the plan to benefit supplements or benefit payments larger than ERISA's maximum limit. Also, some workers eligible for these benefits may choose to wait longer to retire to try to avoid or mitigate the amount of benefit reductions.

Recoveries can also mitigate possible benefit losses that have not been guaranteed by PBGC. As PBGC is still in the early stages of valuing the plan, it has not fully determined the extent to which recoveries will impact participants' unfunded nonguaranteed benefits. According to a PBGC official, preliminary estimates suggest that PBGC recoveries allocated to Delphi participants' benefits will lessen the extent of benefit reductions for some participants with benefits at the top of the statutory allocation priority category 3—that is, those who were retired (or were eligible to retire) at least 3 years prior to the date of plan termination for the salaried plan.⁷³ Most of the other large plans we reviewed had sufficient assets and recoveries to partially or fully fund this priority category. (See app. III for the allocation of plan assets and recoveries to the priority categories for other large terminations we reviewed.)

⁷³For terminated underfunded plans, ERISA establishes a detailed process for allocating plan assets and PBGC recoveries to participants' benefits based on six priority categories. For further details, see appendix III. As discussed in the prior section, the recoveries allocated to participants for unfunded and nonguaranteed benefits do not include any of the recoveries for "due and unpaid employer contributions," which are allocated back to the pension plans to which they were owed and allocated with plan assets rather than recoveries.

As for the magnitude of benefit reductions, PBGC could not provide summary information on the range of retirees' losses. However, according to DSRA officials, information they collected indicates that salaried retirees under 65 years of age were at risk for "significant pension reductions." DSRA requested information on losses from approximately 4,000 salaried retirees who may have received reductions in benefits as of the first quarter of 2010. The 1,703 who responded (or about 8 percent of all salaried plan participants) reported losses in benefits ranging from 5 percent to 60 percent, with more than 90 percent having losses of 10 percent to 40 percent.⁷⁴ Our review of a small judgmental sample of reductions for seven salaried retirees showed a range of pension losses from 12 percent to 40 percent. The salaried retiree who had a 12 percent drop in pension benefits lost \$349 per month (a decline from \$2,944.25 to \$2,595.15 per month) due to the loss of a substantial portion of his early retirement supplemental benefit. The salaried retiree who had a 40 percent drop in pension benefits lost \$1,490.67 per month (a decline from \$3,732.63 to \$2,241.96 per month) due to the loss of benefits in excess of the maximum limit based on his age at retirement and his annuity that provided survivor benefits.

Agreements between GM and Unions Protect Certain Hourly Retirees from Benefit Loss

Agreements negotiated between GM and various Delphi unions have protected certain participants in Delphi's hourly plan from benefit loss due to termination of their underfunded plan. These agreements include the arrangement that resulted in the transfer of 14,413 (about 22 percent) of Delphi's hourly plan participants back to GM's hourly plan in September 2008, as well as the provision of pension top-ups covering reductions in benefits resulting from the application of ERISA limits.⁷⁵ But most Delphi employees are not protected by these agreements—including a substantial portion of hourly plan participants and all the participants in the salaried plan and other smaller Delphi pension plans.

In 2007 and 2008, as part of Delphi's bankruptcy and restructuring plan at the time, GM and Delphi negotiated agreements to transfer the Delphi hourly plan participants' pensions back into GM's hourly plan in two

⁷⁴We could not verify the accuracy of information collected by DSRA nor could we perform any statistical analyses to determine the significance of the results.

⁷⁵For a summary and timeline of events surrounding the creation of the union agreements and the termination of Delphi plans, see GAO-11-373R.

installments.⁷⁶ The unions participated in developing the criteria to select the pensions to be transferred in the first installment, which took place in September 2008.⁷⁷ In this transfer, the pensions of about 24 percent (14,413 of 60,905) of Delphi's hourly plan participants were transferred to GM's hourly plan, which assumed the associated \$2.1 billion in net liabilities for these pensions.⁷⁸ As a result, those Delphi plan participants whose pensions were transferred were no longer part of Delphi's plan and were therefore protected from any benefit loss resulting from Delphi's subsequent plan termination.

Furthermore, top-up agreements covering certain hourly workers will protect these workers, but not others, from potential losses due to the benefit limits in ERISA. In June and August of 2007, GM agreed with UAW, IUE, and USWA to extend the top-up agreements originally negotiated in 1999 after Delphi's spinoff from GM. In November 2008, Delphi froze its hourly plan, ceasing the accrual of additional benefits under the plan and triggering the top-up agreement for covered participants.⁷⁹ GM negotiated and maintained the top-up agreements with the UAW during its bankruptcy and restructuring, as did new GM with the IUE and USWA in September 2009. As a result, certain covered hourly employees will receive their full promised benefits despite the plan freeze and subsequent termination, even if their benefits exceed the guaranteed

⁷⁶On September 6, 2007, GM and Delphi signed the first Global Settlement Agreement that laid out their plans to transfer pensions from Delphi's hourly plan to GM's hourly plan. The plans for the second pension transfer are included in Section 2.03 of the Global Settlement Agreement between Delphi and GM, dated September 12, 2008.

⁷⁷The criteria and order of Delphi hourly pensions to be transferred was based on 2007 negotiations between the Unions, Delphi, and GM and contained in paragraph 22(b) of the Term Sheet (Attachment B) to the UAW-Delphi-GM Memorandum of Understanding – Delphi Restructuring, dated June 22, 2007 (and comparable agreements for the IUE-CWA and USWA). The UAW-Delphi-GM Implementation Agreement, dated September 26, 2008 (and comparable agreements for the IUE-CWA and USWA), supplemented this information to include additional criteria.

⁷⁸The second installment never took place because Delphi could not meet the agreed upon conditions for the transfer. For more information about the Delphi reorganization efforts, see GAO-11-373R.

⁷⁹In September 2008, Delphi also froze its salaried plan and three smaller qualified DB plans to limit all future benefit accruals. For more information on types of freezes and their effects, see: GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817 (Washington, D.C.: Jul. 21, 2008).

benefit limits under ERISA. According to data provided by GM, about 60 percent of the participants in Delphi's hourly plan as of the date of plan termination are potentially covered by GM top-ups if there is any reductions in their promised benefits. As of June 2011, GM reported that it had paid \$221.9 million to 12,638 Delphi retirees and dependents under these top-up agreements.

As indicated in figure 4, however, most Delphi employees are not covered by these top-up agreements. No participants in Delphi's salaried plan or other four smaller plans are covered. In addition, about 40 percent of Delphi hourly plan participants are also not covered, including anyone who never was qualified because they were not members of the unions securing these agreements, were not members of the GM hourly plan prior to the spinoff, or lost their qualification because they had a break in their employment or otherwise lost their seniority. Participants who would otherwise be covered, but do not meet the retirement criteria of the plan, also will not be provided top-ups, according to GM officials.⁸⁰

⁸⁰Pension plans include retirement eligibility criteria that must be met to receive normal or early retirement benefits. For instance, a Delphi hourly plan participant must generally be of certain age and have sufficient number of credited years of service to retire. For example, to get a normal retirement, a participant needs to be 65 years old. To get an early retirement, a participant generally needs to be at least 60 years old with 10 years of service, have 30 years of credited service, or meet the rule-of-85 (i.e., be at least 55 years of age, but not age 60, and have the total of his age and years of credited service total at least 85).

Figure 4: Number of Delphi Employees Covered by GM Top-Ups, by Plan

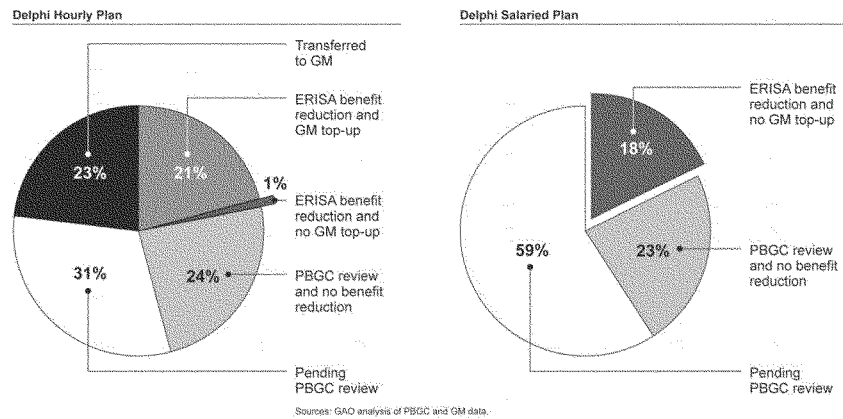
Sources: GAO analysis of PBGC and GM data.

Note: Delphi hourly plan participants who were not protected by top-up agreements include all those who were not members affiliated with UAW, IUE, or USWA and were not previously employed by GM prior to the Delphi spin-off.

PBGC will reduce the benefits of all participants in the terminated pension plans whose promised benefits exceed ERISA's guaranteed benefit limits. Because of the GM top-up, certain hourly plan participants will have any pension benefit reduced because of statutory limits paid to them by GM. The combination of the GM top-ups and the 2008 partial plan transfer of Delphi's hourly plan participants to GM have resulted in a much higher percentage of salaried plan participants ultimately facing benefit reductions than hourly plan participants. Based on the status of PBGC's benefit reviews as of June 2011, 18 percent of the salaried plan participants have had their benefits reduced, while only 1 percent of the hourly plan participants had reductions that will not be topped up by GM.⁸¹ (See fig. 5.) However, the percentage of hourly participants with reductions not topped up by GM is expected to rise over time, as more of this group have their benefits reviewed by PBGC. According to PBGC officials, no other underfunded pension plan terminated and trustee by PBGC has had a top-up agreement with a parent company comparable to these agreements between Delphi and GM.

⁸¹The 18 percent of salaried plan participants with benefit reductions and no top-ups represent 45 percent of the retirees with reductions. The 1 percent of hourly plan participants with reductions and no top-ups represent 5 percent of the hourly retirees reviewed by PBGC with reductions.

Figure 5: Status of Benefits for Participants from Delphi's Hourly and Salaried Plans (as of June 2011)



Both Delphi and PBGC Provided Delphi Employees with Information

In the course of the Delphi bankruptcy and the termination of its pension plans, Delphi employees were notified by Delphi and subsequently by PBGC of certain facts, as required by law—namely, of Delphi's intention to defer pension plan contributions and to subsequently freeze the plans, and of PBGC's intention to terminate and trustee the plans, and subsequently the effects, when calculated, on individual employee pensions. Through their unions, hourly employees received additional information, while salaried employees had no formal representative through which to receive additional information until they formed DSRA.

Delphi Notified Pension
Holders as Required and
also Communicated with
Employee Representatives

Delphi notified both hourly and salaried employees in 2006 that it had failed to make the minimally-required contribution to their pension plans due at that time and that the plans were underfunded by \$4.3 billion as of December 2004.⁸² Later in 2006, it also notified its employees, as required, that the company had requested a funding waiver for plan year 2006 from the IRS.⁸³ This notification also included legally required information such as a description of the extent to which the plan is funded. Similarly, in 2007, Delphi notified the hourly employees of another waiver request to defer hourly plan contributions for plan year 2007. Subsequently, as required, in October 2008, Delphi notified representatives of the unions, UAW, IUE, and USWA, that the hourly plan would be frozen as of the end of November 2008 and that participants would, consequently, cease accruing additional pension benefits.⁸⁴ In addition, as required, in August of 2008, Delphi also notified salaried employees that their plan would be frozen as of the end of September.

Prior to the termination, Delphi employees did not receive regular information from Delphi as to the actual funding status of their plans. Under a new federal requirement, such reporting would have been first required of Delphi by January 1, 2010—several months after PBGC had terminated and trustee the plans.⁸⁵ However, Delphi noted that it provided its employees with summary plan descriptions, as required.⁸⁶ The example summary plan descriptions we obtained for the salaried and hourly plans included information about PBGC's pension insurance program and how pension payments could be reduced if the plan terminates without enough money to pay all benefits, based on the guarantee limits in ERISA and PBGC regulations.

⁸²ERISA requires plan sponsors to notify employees when the sponsor requests a waiver from annual plan funding from the IRS (29 U.S.C. § 1082(c)(6)); and to notify employees and unions if the sponsor freezes the plan (29 U.S.C. § 1054(h)).

⁸³The Delphi hourly and salaried plan year was from the beginning of October to the end of September of the following calendar year.

⁸⁴The splinter unions, IBEW, IAM, and IUOE were also notified in October 2008 that their members' benefits would be frozen as of the end of November 2008.

⁸⁵Pension Protection Act of 2006, Pub. L. No. 109-280, § 501(a), 120 Stat. 780, 936-39. (codified at 29 U.S.C. § 1021(f)) and Employee Benefits Security Administration, Field Assistance Bulletin No. 2009-01 at 2 (Feb. 10, 2009).

⁸⁶29 U.S.C. § 1022 and 29 C.F.R. § 2520.102-3(m)(1)-(3) (2011).

PBGC Communicated with
Delphi Employees

In a July 2009 PBGC press release, PBGC announced the Delphi employee pension plans were terminated and the underfunded status of the plans. Following termination, PBGC notified Delphi employees of its role as statutory trustee of the plans, as required by ERISA.⁸⁷ Based on official Delphi notices to employees we reviewed, this press release from PBGC constituted the first time that employees were apprised of the fact that the plans were severely underfunded since the notice from Delphi in 2006. Following termination in July, PBGC sent Delphi employees letters notifying them that if they were eligible and applied to PBGC to begin payments, it would begin paying estimated benefits. It also has a toll-free telephone number that allows any participant to call PBGC directly with questions. PBGC sent Delphi employees a welcome packet and a video describing PBGC's role as trustee. The agency also spoke regularly with representatives of DSRA. PBGC met, as well, with union representatives of UAW, IUE, and USWA to answer their questions.

As of October 2011, PBGC sent benefit determination letters, informing participants of their benefits, to about 10,600 hourly employees and to about 50 salaried employees. According to PBGC, letters to many salaried employees had been delayed due to coordination with several insurers contracted by Delphi to provide annuities.

Delphi Employees also
Received Information
through Their Employee
Representatives

As representatives of hourly employees in collective bargaining over wages and benefits, the three major unions with whom we spoke—UAW, IUE, and USWA—said that they kept their members apprised of changes to their benefits and prior agreements, through briefings, letters, and through the process of ratification. In addition, their members were apprised by GM in January 2010 that the company would honor the top-up agreements. On the other hand, Delphi's salaried employees had no such union membership or agreement with GM, and received their information exclusively from Delphi until just before termination in February 2009, when they formed DSRA.

⁸⁷29 U.S.C. § 1342(d)(2).

Concluding Observations

The termination of Delphi's pension plans culminated from a complicated and intertwined set of events involving Delphi, GM, various unions, and Treasury, as well as PBGC. That some participants will not get the full benefits promised to them by their employer is not unusual when companies go bankrupt and leave their plans with large unfunded liabilities. At the same time, the role that GM and Treasury played in the events leading up to termination caused the process to be unusual in several respects. Beginning with negotiations related to Delphi's spin-off in 1999, GM—although no longer the sponsor of the Delphi plans—agreed to top up the benefits of certain union workers should the Delphi hourly plan be frozen or terminated, and maintained these top-up agreements at various points over the next decade. In addition, after Delphi filed for bankruptcy, GM agreed to take back all or part of Delphi's hourly plan under certain conditions, and actually took back the pensions of nearly a fourth of Delphi hourly plan's participants in 2008. PBGC officials noted they have not seen these types of agreements in any other plan terminations to date. Then, with GM's own financial condition deteriorating, Treasury's role as a shareholder led some to question the role Treasury might also be playing with respect to GM's decisions regarding Delphi and its pension plans. As we have reported previously, Treasury's multiple roles in situations involving the auto industry and workers' pensions may create potential tensions and challenges. On behalf of the U.S. taxpayer, Treasury has an interest in safeguarding taxpayer investment, while also—through the Secretary of the Treasury's role on PBGC's board—protecting the financial viability of workers' pension plans. Although Treasury has established policies to separate these interests, and various parties told us that Treasury did not play an active role in decisions regarding Delphi's plans, potential tensions due to these multiple roles remain. In our prior work on the automakers' pension plans, we concluded that the best way for Treasury to mitigate these tensions is through more open reporting to Congress and the public on its activities. In response to a previous recommendation, Treasury implemented a revised reporting policy, attempting to balance concerns about publicly disclosing proprietary information in a competitive market with the need for greater transparency. We believe that the most effective means of addressing concerns about Treasury's different roles is for Treasury to continue to be as transparent as possible about its activities.

Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from the Department of the Treasury (see appendix IV). Treasury's comments generally agree with the findings and concluding observations in our report, emphasizing that Treasury did not authorize, approve, or consent to the termination of the Delphi salaried plan, and that PBGC independently decided - not the PBGC board or Treasury - to terminate the Delphi pensions. We continue to believe that Treasury's multiple roles in situations involving the auto industry and workers' pensions may create the appearance of potential tensions and challenges, and that the most effective means of addressing these concerns is for Treasury to continue to be as transparent as possible about its activities.

In addition, Treasury, PBGC, and the Department of Labor, all provided technical comments that we incorporated as appropriate. We also provided certain segments of the draft to Delphi, GM, DSRA, UAW, IUE, and USWA. We received technical comments on these segments from GM and USWA, and have incorporated these where appropriate, as well.

We are sending copies of this report to the appropriate congressional committees, the Director of PBGC, the Secretary of Labor, the Secretary of Treasury, the Secretary of Commerce, and other interested parties. The report also is available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.



Barbara D. Bovbjerg
Managing Director
Education, Workforce,
and Income Security Issues

List of Requesters

The Honorable John A. Boehner
Speaker of the House of Representatives

The Honorable Roger F. Wicker
United States Senate

The Honorable Spencer T. Bachus
Chairman, Committee on Financial Services
House of Representatives

The Honorable Mike Pence
The Honorable Michael R. Turner
House of Representatives

Appendix I: Single-Employer Firms with the Largest PBGC Claims for Terminated Plans (1975 through 2011)

Top-10 firms	Number of plans	Fiscal year(s) of plan termination(s)	Claims (by firm)	Vested participants	Average claim per vested participant	Percent of total claims
1. United Airlines	4	2005	\$7,441,450,992	123,957	\$60,033	16.3
2. Delphi	6	2009	6,108,491,551	69,042	88,475	13.4
3. Bethlehem Steel	1	2003	3,654,380,116	91,312	40,021	8.0
4. US Airways	4	2003, 2005	2,751,534,173	55,770	49,337	6.0
5. LTV Steel ^a	6	2002, 2003, 2004	2,134,985,884	83,094	25,694	4.7
6. Delta Air Lines	1	2006	1,641,083,525	13,291	123,473	3.6
7. National Steel	7	2003	1,275,628,286	33,737	37,811	2.8
8. Pan American Air	3	1991, 1992	841,082,434	31,999	26,285	1.8
9. Trans World Airlines	2	2001	668,377,106	32,263	20,717	1.5
10. Weirton Steel	1	2004	640,480,970	9,410	68,064	1.4
Top-10 total	35		\$27,157,495,038	543,875	\$49,933	59.6
All other total	4,257		\$18,390,580,981	935,125	\$19,666	40.4
Total	4,292		\$45,548,076,019	1,479,000	\$30,797	100.0

Source: PBGC, Pension Insurance Data Book 2009 and 2011 PBGC Annual Report.

Note: Cumulative plans include 10 multiemployer plans trustee by PBGC before 1980. PBGC has not trustee any multiemployer plans since 1980. The Multiemployer Pension Plan Amendments Act of 1980 changed PBGC's responsibility from trusteeship of troubled multiemployer plans to providing financial assistance (loans) to insolvent plans. Pub. L. No. 96-364, 94 Stat. 1208.

^aDoes not include 1996 termination of a Republic Steel plan sponsored by LTV.

Appendix II: Number and Percentage Delphi Retirees with Reductions in ERISA Benefits Due to Guaranteed Benefit Limits (as of June 1, 2011)

Plan	Total number of participants (as of termination)	Number of participants reviewed by PBGC as of June 2011	Number with reductions in PBGC estimated benefit ^a	Accrued-at-normal limit ^b			Maximum limit ^c			Phase-in limit ^d		
				Percentage reviewed with reduction ^e	Number	Percentage reduced	Number	Percentage reduced	Number	Percentage reduced	Number	Percentage reduced
Delphi Hourly Plan ^f	20,203	8,273	3,714	45	11,619	41.42	472	1.68	352	1.25	0	0
Packard-Hughes Interconnect Non-Bargaining Retirement Plan (PHI_NBU)	1,383	240	30	13	2,323	28.08	2,174	26.28	0	0	0	0
Packard-Hughes Interconnect Bargaining Retirement Plan (PHI_BU)	165	80	62	78	0	0	0	1	1.61	61	98.39	0
ASEC Manufacturing Retirement Program (ASEC)	533	128	6	5	0	0	0	4	66.67	0	0	0
Delphi Mechatronic Systems Retirement Program (DWS)	148	12	3	25	3	100.00	1	33.33	0	0	0	0

Source: GAO analysis of PBGC data.

^aRetirees may have more than one type of reduction; therefore, the number of retirees with reductions and the number of reductions may not be the same for each plan.

^bThese rates are subject to change as more workers retire and receive early estimated reductions and final benefit determination letters from PBGC over the next year or more.

^cAccrued-at-normal limit: The monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. The portion of any combined early retirement benefit and supplemental benefit that exceeds the normal retirement age straight-life annuity is not guaranteed under this provision. 29 C.F.R. § 4022.21 (2011).

^dMaximum limit: The guaranteed benefit cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. In 2009, the maximum was \$54,000 per year for a person who begins to receive benefits from PBGC at age 65 and with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2011).

^ePhase-in limit: The guaranteed benefit cannot include any benefit increase that was made within 1 year of the date of the plan termination. For benefit improvements that became effective more than 1 year but less than 5 years prior to the plan's termination, the guaranteed amount is the larger of 20 percent of the benefit increase or \$20 per month of the increase for each full year the increase was in effect. 29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2011).

^fPBGC also found that 1,567 hourly retirees should have their benefits reduced because it determined that they were not eligible for the "mutually satisfactory retirement," which is a type of early retirement under the Hourly Plan.

^gAs of June 2011, PBGC still had about 2,000 of the 30,000 Hourly Plan retirees awaiting review.

Appendix III Allocation of Plan Assets and Recoveries to Unfunded Nonguaranteed Benefits

Upon the termination of a single-employer plan, plan assets are identified, valued, and then allocated to participant benefits, in accordance with the requirement of section 4044 of ERISA. Codified at 29 U.S.C. § 1344. In addition to plan assets, a portion of monies from company assets that PBGC recovers for unfunded benefit liabilities are allocated to participant benefits, in accordance with section 4022(c) of ERISA. 29 U.S.C. § 1322(c).

Plan assets available to pay for benefits under the plan are allocated to participant benefits according to six priority categories, as described in table 4. Assets are allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets are allocated to the next lower priority category. This process is repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated. Most private sector defined benefit plans do not require or allow participant contributions, so there are rarely any benefits in priority categories 1 and 2. Thus, in most trustee plans, asset allocation begins with the benefits in priority category 3, that is, the benefits of those retired or eligible to retire 3 years before the plan terminated. However, it should be noted that assets are allocated based on retirement eligibility, not retirement status, and that many participants have benefits in more than one category. Table 5 provides the allocation of plan assets and recoveries to priority categories among plans that had 5,000 or more participants for the 10 firms with the largest claims.

Appendix III Allocation of Plan Assets and Recoveries to Unfunded Nonguaranteed Benefits

Table 4: Allocation Priority Categories (PC)

Priority Category	Definition
PC-1	Accrued benefits derived from voluntary employee contributions. (According to PBGC, such benefits are "extremely rare" among private sector defined benefit plans.)
PC-2	Accrued benefits derived from mandatory employee contributions. (According to PBGC, such benefits are "quite uncommon" among private sector defined benefit plans.)
PC-3	Annuity benefits that have been in pay status for at least 3 years before the plan's termination date, or could have been in pay status for at least 3 years before the plan's termination date had the participant chosen to retire at his or her earliest possible retirement date; however, benefits subject to the phase-in limitation (that is, benefit increases made within the last 5 years) are excluded. These benefits can be either guaranteed or nonguaranteed.
PC-4	Other guaranteed benefits and certain nonguaranteed benefits. The nonguaranteed benefits are those that are subject to the aggregate benefits limitation for participants in more than one plan that has been terminated with insufficient funds or are subject to special provisions applicable to substantial owners (that is, those owning more than 10 percent of the company).
PC-5	Other vested nonguaranteed benefits that a participant is entitled to under the plan; however, benefits that result solely due to the termination of the plan—which are deemed "forfeitable"—are excluded.
PC-6	All other benefits under the plan. This category includes nonvested benefits and "grow-in" benefits, which are benefits that are provided in some situations where the company continues to operate after the plan is terminated.

Source: PBGC.

Appendix III Allocation of Plan Assets and Recoveries to Unfunded
Nonguaranteed Benefits

Table 5: Comparison of Allocation of Plan Assets and Recoveries among Plans with 10 Largest Claims

Firm/ plans ^a	Present value ^b (millions of dollars)			Allocations, by priority category/ Percent of unfunded nonguaranteed benefits funded by recoveries									
	Unfunded benefit liabilities			Percent of liabilities funded by assets					Percent of unfunded nonguaranteed benefits funded by recoveries				
	Plan assets	Unfunded guaranteed benefits ^c	Unfunded non- guaranteed benefits	Total ^d	Recovery ratio (percent) ^e	PC3	PC4 ^f	PC5	PC6	PC3	PC4 ^g	PC5	PC6
United Airlines													
Ground	1,309	1,979	796	2,774	12.88	97	0	0	0	100	Not calculated	13	0
Employees plan													
Management, administrative and public contract plan	1,651	1,644	670	2,313	12.75	100	1	0	0	Not applicable ^h	100	37	0
Delta													
Flight attendant plan	1,427	1,644	256	1,901	13.23	69	0	0	0	100	Not calculated	100	9
Pilots plan	2,846	1,376	1,381	2,757	12.98	81	0	0	0	56	0	0	0
Delta (based on early estimates, calculations not yet finalized)													
Hourly plan	3,700	4,000	400	4,400	6.3	(allocations not yet determined)				(allocations not yet determined)			
Salaried plan	2,400	2,200	400	2,600	6.3	(allocations not yet determined)				(allocations not yet determined)			
Bethlehem Steel													
Bethlehem Steel plan	3,533	3,693	835	4,529	1.11	60	0	0	0	5	0	0	0
US Airways													
Plan for pilots	1,193	552	1,692	2,244	0.00	100	Not calculated	0	0	Not applicable ^h	Not calculated	0	0
Employees of IAM & AWW	560	749	24	774	8.27	77	0	0	0	53	Not calculated	0	0
Flight attendants plan	420	647	36	683	0.00	100	Not calculated	0	0	Not applicable ^h	Not calculated	0	0
Certain employees plan	895	685	16	701	4.39	100	7	0	0	Not applicable ^h	Not calculated	6	0

**Appendix III Allocation of Plan Assets and Recoveries to Unfunded
Nonguaranteed Benefits**

Present value ² (millions of dollars)				Allocations, by priority category ⁷										
Firm/ plans ^a	Plan assets	Unfunded benefit liabilities		Recovery ratio (percent) ⁸	Percent of liabilities funded by assets					Percent of unfunded nonguaranteed benefits funded by recoveries				
		Unfunded guaranteed benefits ^c	Unfunded non- guaranteed benefits		PC3	PC4 ^d	PC5	PC6	PC3	PC4 ^d	PC5	PC6		
LTV Steel														
Hourly plan	1,697	1,681	672	2,353	1.97	66	0	0	0	100	Not calculated	1	0	0
Salary plan	384	302	66	367	2.12	65	0	0	0	100	Not calculated	0	NA	NA
Delta Air Lines														
Pilots plan	1,985	799	1,769	2,568	38.51	93	0	0	0	100	Not calculated	34	0	0
National Steel														
Hourly plan	482	471	149	620	0	77	0	0	0	0	0	0	0	0
Weirton retirement program	313	190	1	192	7.86	73	0	0	0	0	Not calculated	8	0	0
Corporation retirement program	303	291	73	364	0.	69	0	0	0	0	0	0	0	0
Pan American World Airways														
Cooperative retirement income plan	301	703	13	715	12.01	52	0	0	0	32	0	0	0	0
Trans World Airlines														
Plan for employees	736	460	4	464	4.94	100	Not calculated	0	0	Not applicable ⁶	Not calculated	25	0	0
Weirton Steel														
Retirement plan	540	637	205	842	0	71	0	0	0	0	0	0	0	0

Source: GAO analysis of PBSC data.

^aOf the 35 plans associated with the 10 largest claims, this table includes the 20 plans with 5,000 or more participants. Of the 15 remaining plans (including the 4 smaller Delphi plans), (1) 5 plans had unfunded nonguaranteed benefits that exceeded \$20 million and the participants' portion of recoveries should be allocated using each plan's actual recovery ratio, (2) 9 plans had unfunded nonguaranteed benefits of less than \$20 million and the participants' portion of recoveries should be allocated using the Small Plan Average Recovery Ratio (SPARR), and (3) 1 plan did not have information on allocation of recoveries.

Appendix III Allocation of Plan Assets and Recoveries to Unfunded
Nonguaranteed Benefits

¹The present value is the actuarial value of benefits calculated as of the date of plan termination.

²The ERISA guaranteed benefits are equal to the plan assets and the unfunded guaranteed benefits.

³The total unfunded benefit liabilities are equal to the unfunded guaranteed benefits and the unfunded nonguaranteed benefits. This total may be slightly higher or lower than the sum of these preceding columns due to rounding.

⁴For plans with unfunded nonguaranteed benefits exceeding \$20 million, the recovery ratio is the actual recovered amount (under section 4022(c) of ERISA) divided by the unfunded nonguaranteed benefits. In other cases, the ratio is an average of PBGC's recoveries over a 5-year period.

⁵In most cases, plans had no participants in either the PC1 or PC2 categories. Therefore, we did not include these categories in the table. However, four of our plans did have participants in these categories: the US Airways Flight attendants plan, the Verton retirement program plan, the Trans World Airlines plan for its employees, and the National Steel corporation retirement program. All these plans had sufficient plan assets to cover 100 percent of the unfunded PC2 benefits.

⁶The funded percentage was not calculated for the PC4 category in some plans. According to PBGC officials, this may have been because it was obvious that assets were insufficient so that calculating the funded status was unnecessary.

⁷Not applicable because PC3 benefits were 100 percent funded by plan assets.

⁸IAM & AW stands for the International Association of Machinists and Aerospace Workers.

Appendix IV: Comments from the Department of the Treasury



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 8, 2011

Barbara D. Bovbjerg
Managing Director
Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

RE: Response to GAO's Draft Report: "Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits"

Dear Ms. Bovbjerg:

I am writing in response to your draft report entitled, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits*, dated November 23, 2011. The Department of the Treasury ("Treasury") appreciates the Government Accountability Office's ("GAO") review of the events leading to the termination of Delphi's pension plans, GM's decision to assume pension benefit "top-up" agreements with certain hourly pension plan participants, and Treasury's role in the process. This letter provides Treasury's official response to the GAO draft report.

As you describe in the draft report, the events surrounding GM's decision to assume the top-up agreements stemmed from negotiations between GM, Delphi, and various unions that took place more than a decade ago, in the context of GM spinning off Delphi into a separate company. As a result of those negotiations, certain participants in the Delphi hourly plan received pension benefit guarantees. As the draft report notes, at the time of the spin-off, in 1999, the Delphi hourly plan was underfunded, whereas the Delphi salaried plan was fully funded.

The draft report concludes that GAO's work corroborates statements by Treasury, GM, and PBGC that "PBGC independently decided to terminate the Delphi plans" and that "consistent with its usual practice, Treasury did not play an active role" in PBGC's termination decisions. In addition, the draft report concludes that Treasury only "played an advisory role in GM's decisions regarding the Delphi pensions" including "the decision to honor existing top-up agreements with some unions." We agree – Treasury did not authorize, approve, or consent to the termination of the Delphi salaried plan.

The draft report also raises the "potential or perceived tensions" between Treasury's "multiple roles", both as a member of the PBGC board and as a common stockholder in GM, and states that "the appearance of a possible conflict could still arise". However, the draft report recognizes that "Treasury has established policies designed to separate these interests". Specifically, the report finds that PBGC independently decided – not the PBGC board or

Appendix IV: Comments from the Department
of the Treasury

Treasury -- to terminate the Delphi pensions. The draft report also found that although the Secretary sits on the board of PBGC, the board sets broad policy, and is not involved in the PBGCs' day-to-day operations, including decisions about terminating a pension plan. Furthermore, the draft report notes that "in the management of its investment in new GM", Treasury's auto team does not communicate with PBGC.

We recognize that the bankruptcy of Delphi has been extremely difficult and challenging for all its employees, and we are acutely aware of the significant hardships that the entire United States automobile industry has faced in recent years. We appreciate the opportunity to respond to your draft report. We look forward to continuing to work with you and your team as we move forward.

Sincerely,



Timothy G. Massad
Assistant Secretary for Financial Stability

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Barbara D. Bovbjerg, (202) 512-7215, bovbjergb@gao.gov

Staff Acknowledgments

In addition, Margie K. Shields, Assistant Director; Mark M. Glickman, Analyst-in-Charge; James Bennett; Susan Bernstein; A. Nicole Clowers; Julie DeVault; Heather Krause; Edward Leslie; Kathy Leslie; Sheila McCoy; Edda Emmanuelli-Perez; Bryan Rogowski; Raymond Sendejas; and Craig Winslow made significant contributions to this report.

Timeline of Interview Requests

May 5, 2011	<p>It is customary for SIGTARP to start audits with interviews of witnesses who can provide SIGTARP with an overview that can help focus and expedite audit work. SIGTARP may interview the same witnesses after facts are obtained through documents and interviews. SIGTARP decides to start interviews with Treasury's Auto Team. SIGTARP auditors contact Treasury's Office of Financial Stability (OFS) in May 2011 and indicate they would like to start their interview process of former Auto Team officials: Ron Bloom, Matt Feldman, Sadiq Malik, David Markowitz, Steve Rattner, and Harry Wilson. SIGTARP auditors ask for OFS's assistance, as is common in SIGTARP audits for former Treasury officials, in setting up the interviews. OFS responds that they will work to schedule interviews.</p> <p>In the meantime SIGTARP auditors continue their field work analyzing and reading over 100,000 pages of documents from Treasury and GM, tens of thousands of emails and interviewing individuals from GM, PBGC, UAW, USW, IUE-CWA, Delphi, and DSRA.</p>
July 22, 2011	SIGTARP auditors follow back with OFS. SIGTARP auditors ask OFS again for assistance in setting up interviews with Bloom, Feldman, Malik, Markowitz, Rattner, and Wilson. OFS indicates they will get back to us within the week.
July 29 and August 1, 2011	OFS indicates that Malik and Markowitz will meet with SIGTARP; however, Feldman, Rattner, and Wilson will not. OFS provides SIGTARP with contact info for Feldman, Rattner and Wilson. Also, OFS informs SIGTARP that OFS cannot compel Bloom to be interviewed since at that time Bloom was at the White House. Bloom leaves the White House over next few weeks.
August 3, 2011	In a telephone conversation with SIGTARP auditors, Steven Rattner declines to be interviewed.
August 18, 2011	In a telephone conversation with SIGTARP auditors, Harry Wilson declines to be interviewed.
August 4 – September 20, 2011	<p>SIGTARP auditors request an interview with Feldman through his attorney, Michael Schachter.</p> <p>After a handful of phone calls and email exchanges Schachter says that Feldman is considering the request and that he will get back to SIGTARP. SIGTARP doesn't hear from Feldman. SIGTARP auditors follow back again with Schachter and indicate they will be interviewing Malik and Markowitz in New York in October. They ask if Feldman could do the interview while they are in New York. Schachter says Feldman cannot but he is still considering. SIGTARP doesn't hear back from Feldman. SIGTARP auditors continue with the rest of their review.</p>
October 12, 2011	SIGTARP auditors meet with Malik and Markowitz in New York to conduct interviews. OFS was present at interviews.
January 13, 2012	Through the course of SIGTARP auditors' field work and other interviews it is apparent that Harry Wilson played a role on the Auto Team with respect to decisions made pertaining to GM. SIGTARP again tries to work with OFS to obtain assistance in questioning Harry Wilson.

	OFS informs SIGTARP auditors that they reached out to Harry Wilson but he did not respond back to OFS.
February-April 2012	<p>SIGTARP auditors begin to finish up their interviews. SIGTARP auditors have interviewed 43 individuals from GM, Delphi, PBGC, UAW, USW, IUE-CWA and DSRA including former Auto Team officials Malik and Markowitz.</p> <p>With the interview process wrapping up, SIGTARP auditors reach out again to OFS for assistance in obtaining an interview with Mr. Bloom. Mr. Bloom had since left the Administration and started working for Lazard on Feb. 1, 2012. OFS agrees to reach out to Bloom. OFS informs SIGTARP auditors that Mr. Bloom refuses to be interviewed.</p> <p>At this point, Bloom, Rattner, and Wilson have refused to be interviewed. Feldman through his attorney, Schachter, has refused to commit despite several attempts.</p> <p>SIGTARP directly contacts Bloom, Feldman, Rattner, and Wilson by phone one last time.</p> <p>SIGTARP hears back from Rattner and Feldman through their attorneys but does not hear back from Bloom and Wilson. Rattner through his attorney doesn't commit but says Rattner is considering it. Messages are exchanged with Feldman through his attorney but SIGTARP ultimately doesn't hear back. Feldman doesn't commit.</p> <p>In the meantime SIGTARP works with White House counsel's office, as well as Treasury's counsel's office for their assistance. SIGTARP explains that obtaining interviews with these individuals is critically important for the completion of our audit. Treasury and White House inform SIGTARP that although they can't compel them to be interviewed, they will encourage Rattner, Bloom, Wilson and Feldman to be interviewed.</p>
April 30, 2012	SIGTARP General Counsel sends letters to Bloom, Feldman, Rattner, and Wilson notifying them that their refusal to meet with SIGTARP will result in notification to Congress.
May 3-7, 2012	<p>Steven Rattner agrees to be interviewed. SIGTARP does not hear back from Wilson or Bloom.</p> <p>Feldman through his attorney Schachter sends letter to SIGTARP asking for a list of questions. SIGTARP General Counsel sends letter to Schachter in response indicating that it is not SIGTARP's practice, in accordance with auditing standards, to provide a list questions before an interview. Schachter sends letter to SIGTARP General Counsel asking SIGTARP for a list of issues. SIGTARP sends letter to Schachter providing a list of issues and asks for a response before close of business May 8, 2012. If SIGTARP does not hear a response before then SIGTARP indicates in the letter to Schachter that SIGTARP will notify the Congressional requesters of the audit. SIGTARP does not hear back from Feldman or his attorney Schachter.</p>
May 9, 2012	SIGTARP sends notification to the Congress (Chairman Issa, Ranking Member Cummings and Representative Turner) that Bloom, Feldman, and Wilson refuse to meet with SIGTARP.
May 16, 2012	SIGTARP auditors conduct interview with Steven Rattner.

From: [REDACTED]
Sent: Monday, July 09, 2012 9:40 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Delphi Audit Interviews

[REDACTED] -

To follow up on your question poised to SIGTARP's Legislative Affairs Director, Joseph Cwiklinski, concerning the witnesses that SIGTARP seeks to interview to complete it's Delphi audit, SIGTARP has had no communications from Messrs. Wilson, Bloom or Feldman, or any representatives on their behalf indicating that they will make themselves available for the requested interview in conjunction with our audit. I would also note that in reviewing their testimony submitted to the Committee, there is no indication of a willingness to make themselves available for an interview.

Please let me know if you need any additional information.

v/r,

Roderick H. Fillinger
 General Counsel
 Special Inspector General for the
 Troubled Asset Relief Program
 1801 L Street, NW
 Washington, DC 20220
 Office: (202) 927-8938
 Cell: (202) 664-0375

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK MCENNEY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIA WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN RABIE BUECKLE, NEW YORK
PAUL A. GOSAR, O.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DELAPLAIN, W.D., TENNESSEE
JOE WALSH, ILLINOIS
TROY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. QUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

EDOLPHUS TOWNS, NEW YORK
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE GUGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEER, CALIFORNIA

March 28, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Over the past year, the Committee has been conducting a wide-ranging investigation of officials at the National Labor Relations Board (NLRB) who you allege were “exceeding their legal authority to pursue a partisan agenda” when they filed a complaint against the Boeing Company for discriminating against workers in Washington State.¹ As part of that investigation, you sent broad requests for documents, held a Committee hearing in which you required the Acting General Counsel of the NLRB to testify, and issued a subpoena compelling the production of tens of thousands of sensitive internal documents.

Last week, a report issued by the NLRB’s Inspector General concluded that a current Board member, Terrance Flynn, committed unethical and potentially criminal conduct when he disclosed confidential pre-decisional information that he obtained through his official position.²

I am writing to request that the Committee conduct transcribed interviews of two former Board members who were the recipients of this information—Peter Schaumber and Peter Kirsanow—in order to determine the extent to which they or their clients may have benefitted. I also request that the Committee send document requests to these former Board members in order to prepare for these interviews.

¹ House Committee on Oversight and Government Reform, *Hearing on Unionization Through Regulation: The NLRB’s Holding Pattern on Free Enterprise*, 112th Cong. (June 17, 2011). See also Issa Condemns NLRB on Boeing Dispute: “Far in Excess of their Mandate,” Daily Caller (June 20, 2011) (online at www.dailycaller.com/2011/06/20/issa-condemns-nlr-on-boeing-dispute-far-in-excess-of-their-mandate/).

² National Labor Relations Board, Office of Inspector General, *Report on Investigation, OIG-I-468* (Mar. 19, 2012).

The Honorable Darrell E. Issa
Page 2

Inspector General's Report

The Inspector General's investigative report concluded that current NLRB Member Terence Flynn "violated the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch" while serving as Chief Counsel. The Inspector General reported that Mr. Flynn shared "deliberative, pre-decisional information that was protected from disclosure and considered by the NLRB to be the most confidential of Agency information" with two former Board Members: Peter Schaumber and Peter Kirsanow. According to the Inspector General's report, these former Board Members obtained confidential pre-decisional information, as well as attorney-client privileged information, on both active litigation and proposed rulemakings.

Based on these findings, the Inspector General concluded as follows:

We also find that the improper disclosure of information to former Members Kirsanow and Schaumber amounted to a conversion of the information for the private benefit of former Member Kirsanow and his client, the National Association of Manufacturers, and former Member Schaumber's labor relations consulting and/or legal practice. The improper disclosures of information to former Member Schaumber were particularly detrimental to the Board's deliberative process in that they involved the positions of Board Members and staff prior to the public announcement of Board decisions and disclosure of the type of information that could have a chilling effect on the operation of the Board and may prejudice the due process rights of the parties in pending and future cases.

According to the Inspector General's report, after leaving the NLRB, Mr. Schaumber obtained the following information from Mr. Flynn:

- Internal memoranda between the Office of General Counsel and the Board, one of which contained legal advice to the Board;
- An email disclosing recommendations by the NLRB's Acting General Counsel regarding whether the Board should join in litigation as an amicus party;
- A document that listed the Member and attorney assignments and status of cases pending before the Board; and
- An e-mail attaching analysis and comments prepared by three Board counsels for a Board Member on the resolution for the representation rule that would be considered at the Board's open meeting.

The Honorable Darrell E. Issa
Page 3

According to the Inspector General's report, investigators located on Mr. Flynn's computer a business plan that appeared to have been created by Mr. Schaumber. The file, named "Schaumber business plan.doc," stated:

My practice will be developed in part by leveraging my Agency connections and focusing the attention of senior management on the likely priorities of the Obama Board and strategies to respond to them.

Another file, entitled "Schaumber SuppBusPlan.doc," described how Mr. Schaumber would "serve as a liaison for the firm on matters requiring high level intervention at the National Labor Relations Board and other Government agencies."

Similarly, according to the Inspector General's report, Mr. Kirsanow obtained from Mr. Flynn attorney-client privileged information relating to his representation of the National Association of Manufacturers (NAM) in an action against the NLRB, seeking to prevent the NLRB from implementing a recently proposed notice posting rule. Mr. Kirsanow also received research assistance from Mr. Flynn in relation to his representation of NAM in the notice posting rule litigation, according to the Inspector General's report.

Request for Interviews and Documents

Based on the investigative report, it appears that the Inspector General did not conduct interviews of either Mr. Schaumber or Mr. Kirsanow. In addition, since the Inspector General's report focused predominantly on the conduct of the current Board Member, Mr. Flynn, it relied primarily on records already in the custody and control of the NLRB.

Given our Committee's oversight of NLRB, I request that the Committee conduct transcribed interviews of former Board Members Peter Schaumber and Peter Kirsanow to determine to what the extent they may have used the information they obtained for their private benefit or to advance their clients' business interests.

To prepare for these interviews, I also request that the Committee send letters to both former Board members seeking the following documents for the time period beginning on the date each departed the Board to the present:

- (1) All communications with Terence Flynn, including communications forwarding correspondence with Mr. Flynn to other recipients; and
- (2) All documents and communications to, from, and relating to the NLRB, including but not limited to pending cases, proposed and final rulemakings, congressional activity, and any legal or business strategy for clients with business before the NLRB.

The Honorable Darrell E. Issa
Page 4

Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. BICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK MCENNEY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN MARIE BURSICK, NEW YORK
PAUL A. COSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 955-6074
FACSIMILE (202) 925-3874
MINORITY (202) 925-9251
<http://oversight.house.gov>

April 26, 2012

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

EDOLPHUS TOWNS, NEW YORK
CANDLYN B. MALONEY, NEW YORK
CLEANOR HOLMES MCRTON
DISTRICT OF COLUMBIA
DENNIS J. KUCICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE GURLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEER, CALIFORNIA

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On March 28, 2012, I sent you a letter requesting Committee action on a report issued by the Inspector General of the National Labor Relations Board (NLRB) on March 19, 2012, which documented numerous instances in which two former Board Members, Peter Schaumber and Peter Kirsanow, obtained confidential inside information from a current Board member, Terence Flynn, and used it for their private benefit.¹

I am writing today to reiterate my request for documents and transcribed interviews of Mr. Schaumber and Mr. Kirsanow, particularly in light of new and troubling information that makes our Committee's oversight even more imperative.

Specifically, the Inspector General has now informed my staff that he has identified multiple additional improper disclosures of confidential inside information to Mr. Schaumber that he believes are even more serious than those he identified previously. He also reported that he intends to issue a supplemental report on these matters this week.

In addition, the Inspector General has now referred the improper disclosures described in his initial report to the Office of Special Counsel for potential Hatch Act violations due to Mr. Schaumber's role as a senior adviser to presidential candidate Mitt Romney. As the Inspector General's referral letter explains, Mr. Flynn "provided non-public deliberative information and other assistance to Peter Schaumber, a co-chair of the Labor Policy Advisory Group for the Mitt Romney Presidential campaign."²

¹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Mar. 28, 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5661&Itemid=104).

² Letter from Dave Berry, Inspector General, National Labor Relations Board, to Ana Galindo-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel (Apr. 3, 2012).

The Honorable Darrell E. Issa
Page 2

It remains unclear to what extent Mr. Schaumber and Mr. Kirsanow may have taken advantage of this confidential inside information to benefit their own financial interests, the pecuniary interests of their clients, or the political interests of Mr. Romney's campaign. It also remains unclear to what extent these officials used the information in a manner that may have jeopardized the due process rights of litigants or interfered with the deliberative process of the NLRB.

In order to fully investigate these abuses, I reiterate my previous request for transcribed interviews of both Mr. Schaumber and Mr. Kirsanow, as well as requests for documents relating to this investigation.

Inspector General's Findings

As I explained in my previous letter, the NLRB Inspector General issued an investigative report on March 19, 2012, concluding that two former Board Members, Peter Schaumber and Peter Kirsanow, obtained confidential pre-decisional information, as well as attorney-client privileged information, on both active litigation and proposed rulemakings, from Terence Flynn, a current Board Member who was then serving as Chief Counsel.

Based on these findings, the Inspector General concluded as follows:

We also find that the improper disclosure of information to former Members Kirsanow and Schaumber amounted to a conversion of the information for the private benefit of former Member Kirsanow and his client, the National Association of Manufacturers, and former Member Schaumber's labor relations consulting and/or legal practice. The improper disclosures of information to former Member Schaumber were particularly detrimental to the Board's deliberative process in that they involved the positions of Board Members and staff prior to the public announcement of Board decisions and disclosure of the type of information that could have a chilling effect on the operation of the Board and may prejudice the due process rights of the parties in pending and future cases.

According to the Inspector General's report, after leaving the NLRB, Mr. Schaumber obtained the following information from Mr. Flynn:

- Internal memoranda between the Office of General Counsel and the Board, one of which contained legal advice to the Board;
- An email disclosing recommendations by the NLRB's Acting General Counsel regarding whether the Board should join in litigation as an amicus party;

The Honorable Darrell E. Issa
Page 3

- A document that listed the Member and attorney assignments and status of cases pending before the Board; and
- An e-mail attaching analysis and comments prepared by three Board counsels for a Board Member on the resolution for the representation rule that would be considered at the Board's open meeting.

According to the Inspector General's report, investigators located on Mr. Flynn's computer a business plan that appeared to have been created by Mr. Schaumber. The file, named "Schaumber business plan.doc," stated:

My practice will be developed in part by leveraging my Agency connections and focusing the attention of senior management on the likely priorities of the Obama Board and strategies to respond to them.

Another file, entitled "Schaumber SuppBusPlan.doc," described how Mr. Schaumber would "serve as a liaison for the firm on matters requiring high level intervention at the National Labor Relations Board and other Government agencies."

Similarly, according to the Inspector General's report, Mr. Kirsanow obtained from Mr. Flynn attorney-client privileged information relating to his representation of the National Association of Manufacturers (NAM) in an action against the NLRB, seeking to prevent the NLRB from implementing a recently proposed notice posting rule. Mr. Kirsanow also received research assistance from Mr. Flynn in relation to his representation of NAM in the notice posting rule litigation, according to the Inspector General's report.

The Inspector General has informed my staff that he has referred these matters to the Department of Justice for potential criminal prosecution.

New Information from Inspector General

In my previous letter to you on March 28, 2012, I requested that the Committee conduct transcribed interviews of former Board Members Schaumber and Kirsanow to determine the extent to which they may have used the information they obtained for their private financial benefit or to advance their clients' business interests. I explained that the Inspector General did not conduct interviews of either Mr. Schaumber or Mr. Kirsanow.

Since the Inspector General's report focused predominantly on the conduct of Mr. Flynn, it relied primarily on records already in the custody and control of the NLRB. For these reasons, I also requested that the Committee send letters to both former Board Members seeking documents relating to these matters.

The Honorable Darrell E. Issa
Page 4

I have now become aware of additional information regarding the extent to which Mr. Schaumber obtained access to confidential, inside information. Specifically, after further investigation, the Inspector General has now identified additional deliberative information that was leaked improperly to Mr. Schaumber. The Inspector General has informed my staff that he intends to issue a supplemental report this week providing additional information about these violations, which he considers even more serious than those outlined in his initial report.

In addition, the Inspector General has informed my staff that he has now referred to the Office of Special Counsel (OSC) potential Hatch Act violations involving disclosures of internal government information to Mr. Schaumber in his capacity as an adviser to the presidential campaign of former Massachusetts Governor Mitt Romney. On April 3, 2012, the Inspector General sent a letter to the chief of OSC's Hatch Act Unit, which stated:

During the course of an investigation, we found evidence that between September 15, 2011 and November 30, 2011, Terence Flynn, a National Labor Relations Board (NLRB) employee, provided non-public deliberative information and other assistance to Peter Schaumber, a co-chair of the Labor Policy Advisory Group for the Mitt Romney Presidential campaign.³

As you know, the Hatch Act prohibits federal employees from using their official authority or influence to interfere with or affect the results of an election and bans them from engaging in political activities to help a particular political party or candidate for office when on duty. If true, the allegations set forth by the Inspector General are troubling and raise significant concerns about the extent to which Mr. Schaumber and others may have benefited from these improper, and potentially illegal, activities.

Conclusion

On April 16, 2012, the Committee held a hearing on a report issued by the Inspector General of the General Services Administration detailing abuses at a conference in Las Vegas. As soon as you learned of this report, you reacted immediately by scheduling a public hearing within two weeks on the first day Congress returned from its Spring recess. You sent broad document requests, and you quickly issued two subpoenas in that two-week timeframe.⁴ I

³ Letter from Dave Berry, Inspector General, National Labor Relations Board, to Ana Galindo-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel (Apr. 3, 2012).

⁴ Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 4, 2012); Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 9, 2012); Letter from Darrell E. Issa, Chairman, House

The Honorable Darrell E. Issa
Page 5

actively supported the Committee's oversight efforts by immediately requesting a briefing from the Inspector General, asking for an additional witness to testify at the hearing, and publicly condemning the actions of GSA officials involved.

In contrast, you have been silent on the NLRB Inspector General's report, and you have taken no action whatsoever in response to my request. You have called no hearings, conducted no interviews, and sent no document requests.

Our Committee should conduct vigorous oversight of alleged abuses on an even-handed basis, regardless of whether those implicated are Republicans or Democrats. For these reasons, I request that the Committee move forward and schedule the transcribed interviews of Mr. Schaumber and Mr. Kirsanow for the week of April 30, 2012. I also request that the Committee send to both individuals the requests for documents I set forth in my previous letter.

Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member

Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 12, 2012); Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Daniel M. Tangherlini, Acting Administrator U.S. General Services Administration (Apr. 9, 2012). *See also* House Committee on Oversight and Government Reform, Subpoena to Acting Administrator Daniel M. Tangherlini (Apr. 12, 2012); House Committee on Oversight and Government Reform, Subpoena to Jeffrey Neely, Acting Regional Administrator, General Services Administration (Apr. 12, 2012).

Harry Wilson Tapped By Teamsters To Rescue Ailing Trucking Company And Union Jobs

Written by City & State on March 7, 2011. Posted in Labor/Unions, Other News

Harry Wilson, last year's Republican candidate for state comptroller, made a name for himself by helping rescue General Motors from bankruptcy. Now, months after an election he narrowly lost, he has turned his attention from the vehicles to the drivers.

The International Brotherhood of Teamsters recently invited Wilson to help restructure the ailing trucking and freight company, YRC Worldwide, in what they billed as an effort to help save thousands of unionized jobs and prevent the company from going under.

One of the largest trucking companies in the country, YRC had racked up a sizeable debt in recent years, endangering over 20,000 union jobs, the Teamsters said. According to a source with knowledge of the agreement, the union reached out to Wilson the first week in January to devise a rescue.

The effort is still ongoing, but early reviews from the Teamsters have been positive.

"A critical reason for bringing in Harry's team is to fully scrutinize the company's operating assumptions and plans," wrote Teamster President James P. Hoffa in a letter to union members dated Feb. 28. "This was one of his key roles in restructuring GM."

Wilson's team—comprised of experts in auto industry restructuring—was retained to "break through the logjam between the company and the lending group," Hoffa wrote, and to that end drove "a great deal of progress in the last several weeks."

Wilson declined comment on the deal, citing an ongoing nondisclosure agreement. A Teamster official said Wilson's reputation made him an obvious choice.

"We're not at liberty to discuss any details, but we approached Harry after closely following his work on the Obama administration's auto task force, and given the similarities that GM faced and YRCW faces, we believed he would be a tremendous help in fixing this challenging situation," explained Iain Gold, the Teamsters' director of strategic research and campaigns.

Wilson has kept relatively quiet since his narrow loss to Tom DiNapoli in last year's election.

Despite securing nearly all the major newspaper endorsements and landing several big name supporters, including Michael Bloomberg, Wilson lost by less than four points in last year's most competitive statewide race. DiNapoli, meanwhile, had nearly every major union in the state in his corner, which made up for his general lack of name recognition, as well as Andrew Cuomo's refusal to endorse the fellow Democrat.

The local chapters of the Teamsters were among those who backed DiNapoli in last year's race. However, Wilson worked closely with the national union previously while a member of

the team behind President Barack Obama's \$50 billion taxpayer-backed rescue of the auto-manufacturing titan.

The timeline for the restructuring of YRCW was recently extended until July, although it is unclear whether Wilson will continue to be involved. Regardless, Wilson did acknowledge his involvement in politics in New York is far from over. He is currently in discussions to create a public policy organization focused on state and local financial issues, he said.

"The specifics are still underdevelopment," Wilson said. "We don't want to duplicate anything that's being done already."

Wilson said there was a "void" in the policy area of pension and budget reform at the state level, one he aims to fill.

"Is there a think tank component and a political action component?" he said. "We haven't nailed it down yet."

YRC Letter-2-28-2011

Opening Statement
Chairman Patrick McHenry
“The Administration’s Auto Bailouts and the Delphi Pension Decisions:
Who Picked the Winners and Losers?”
July 10, 2012

Today’s hearing is about transparency in government and fulfilling this Committee’s commitment to provide the American people with answers and accountability.

When Congress passed the Troubled Asset Relief Program in October 2008, at the height of the financial crisis, it was designed with a specific purpose: to take toxic assets off the books of large banks and financial institutions. Just a few months after taking office, President Obama directed the Treasury to use a significant portion of those funds to bail out the auto industry. I did not vote for TARP and I disagreed with the manner in which the current administration sought to assist the auto industry. Not only was this decision not authorized by Congress but it was also an ill-advised policy choice: the auto bailouts opened the flood gates for an unprecedented level of moral hazard while subverting the rule of law.

There are clear winners and losers stemming from the auto bailouts. One winner was the United Auto Workers union. A recent study from one of today’s witnesses, George Mason University Law Professor Todd Zywicki, calculated that the United Auto Workers received approximately 26 billion dollars from taxpayers via the auto bailouts that they would have not received they been treated according to standard bankruptcy principles.

The losers, however, are the American taxpayers, who will have to pay a 23 billion dollar bill as a result of this Administration’s decisions. In addition, Delphi Corporation’s non-unionized retirees have lost in a very material way. When the Pension Benefit Guaranty Corporation terminated the pensions of all Delphi retirees, General Motors agreed to “top-up” and make whole their obligations to unionized workers while the non-unionized workers took significant cuts in their pensions. Despite the fact that GM’s promise to the union could have been thrown out in bankruptcy, like so many of GM’s other non-union commitments were, the union agreement was kept in place.

The Special Inspector General for the Troubled Asset Relief Program has been seeking answers to questions about the irregularities of the Delphi pension decisions. We are here today because for over a year, three of the key figures involved in the GM and Chrysler bailouts have refused to meet with the Special Inspector General. On May 9th the Special Inspector General notified the Committee that the three former Obama Administration officials before us today – Mr. Bloom, Mr. Feldman, and Mr. Wilson – had been uncooperative with the Special Inspector General's audit.

These three individuals come from diverse backgrounds and possess different expertise but together represent leading figures from President Obama's Auto Task Force. All three of these individuals made pivotal decisions which are projected to cost taxpayers 23 billion dollars and have left many Delphi retirees with drastically reduced pensions while preserving full pensions for Delphi's unionized retirees.

This is the Committee's third hearing this Congress on the Delphi matter and we have yet to get to the bottom of why a privileged class of union workers were made whole at taxpayers' expense while a group with less political influence was left out in the cold. Some of the Delphi retirees are here today. What they want is the truth. Many of them realize that sacrifices were necessary. What they do not understand is why they had to sacrifice so much while their unionized co-workers sacrificed so little.

The people involved in the process leading to this outcome have an obligation to explain why these decisions were made. The goal of this today's hearing is to get answers as to why these former Administration officials have not cooperated with the Special Inspector General and to shed light onto what happened that caused so many Delphi retirees so much pain.

BACKGROUND

No. 2700 | JUNE 13, 2012

Auto Bailout or UAW Bailout? Taxpayer Losses Came from Subsidizing Union Compensation

James Sherk and Todd Zywicki

Abstract

The U.S. government will lose about \$23 billion on the 2008-2009 bailout of General Motors and Chrysler. President Obama emphatically defends his decision to subsidize the automakers, arguing it was necessary to prevent massive job losses. But, even accepting this premise, the government could have executed the bailout with no net cost to taxpayers. It could have—had the Administration required the United Auto Workers (UAW) to accept standard bankruptcy concessions instead of granting the union preferential treatment. The extra UAW subsidies cost \$26.5 billion—more than the entire foreign aid budget in 2011. The Administration did not need to lose money to keep GM and Chrysler operating. The Detroit auto bailout was, in fact, a UAW bailout.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2700>

Produced by the Center for Data Analysis

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The government bailout of General Motors (GM) and Chrysler between 2008 and 2009 will cost taxpayers approximately \$23 billion. President Barack Obama emphatically defends his decision to subsidize the automakers, arguing it was necessary to prevent massive job losses. Even if one accepts this premise, the government should—and could—have executed the bailout more efficiently, with no cost to taxpayers, had the Administration required the United Auto Workers (UAW) to accept standard bankruptcy concessions. Instead, the Obama Administration gave special treatment to the UAW above and beyond what other creditors and unions received:

- Legally the UAW's claims had the same status as those of other unsecured creditors, but the UAW recovered a much greater proportion of the debts that General Motors and Chrysler owed the union.
- Bankruptcy typically brings uncompetitive wages down to competitive levels. However, existing UAW members did not take pay cuts at General Motors.

TALKING POINTS

- Bankruptcy law calls for similarly situated creditors to receive equal treatment. In the government bailout of General Motors and Chrysler, the United Auto Workers (UAW) union received much more favorable treatment than other creditors and other unions.
- Unlike other unsecured creditors, the UAW recovered most of the money owed to its benefit funds. GM's UAW members—among the most highly paid workers in America—did not take pay cuts as they normally would in bankruptcy.
- Taxpayers would not have lost money on the auto bailout had the UAW not received this special treatment. The bailout would have cost \$26.5 billion less if the Administration had not subsidized UAW compensation.
- The UAW subsidies cost more than the entire foreign aid budget in 2011. The Administration did not need to lose money to keep GM and Chrysler operating.
- The auto bailout was actually a UAW bailout.

- The Administration could have kept the automakers running without subsidizing the UAW's above-market pay and benefits.
- Subsidizing UAW compensation cost \$26.5 billion—more than the government spends each year on foreign aid.
- The cost of subsidizing UAW pay and benefits accounts for the entire net taxpayer losses—\$23 billion—in the bailout.

UAW members at General Motors and Chrysler are among the most highly paid workers in America. High salaries are good, but they must be earned. The taxpayer losses came from the special treatment that President Obama bestowed on the UAW. The auto bailout was actually a UAW bailout.

Detroit Bankruptcy

General Motors, Chrysler, and Ford were in serious trouble well before the recession started. Decades of mistakes by both unions and management had saddled the firms with massive debts, unsustainable labor costs, product-quality problems, and

an overgrown dealer network. Yet Ford mortgaged its assets, began to restructure in 2007, and did not need a bailout. The recession brought these problems to a head at GM and Chrysler. As consumers cut back on discretionary purchases—like cars—both firms ran out of money. To become profitable again the automakers needed to restructure through bankruptcy, removing obligations they could no longer afford.

GM and Chrysler instead asked Washington for a taxpayer bailout. The Bush Administration used the Troubled Asset Relief Program (TARP) to loan GM and Chrysler enough money to stay operational for the first several months of the Obama presidency. To his credit, President Obama denied the automakers the straight-up bailout they asked for. Instead, the Obama Administration forced the companies into bankruptcy as a condition of receiving government support and funded them through the bankruptcy process. The bankrupt automakers sold their assets to new “General Motors” and new “Chrysler”—companies created, capitalized, and partially owned by the government. The taxpayers spent a total of \$80 billion

on Chrysler, General Motors, and General Motors’ finance arm, Ally Financial.¹

A substantial amount of these funds will never be repaid. The government has already written off or realized losses of over \$7 billion.² More losses will come as the government sells its remaining stake in GM and Ally Financial. The Congressional Budget Office estimates that the auto bailout will ultimately cost taxpayers a total of about \$20 billion.³ The Treasury Department is even more pessimistic, projecting that, at GM’s current stock price, taxpayers will lose \$23 billion.⁴

Defending the Bailout

The Obama Administration strongly defends the auto bailout, despite its cost. The President says that the automakers were not able to obtain private bankruptcy funding in early 2009. He argues that without government intervention General Motors and Chrysler would have liquidated, sending the Midwest into a second depression.⁵

Many analysts have pointed out that the United Auto Workers received particularly generous terms during the bankruptcy.⁶ President

1. U.S. Department of the Treasury, “Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2012,” May 10, 2012, Figure 2, <http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/105/Documents105/April%20Monthly%20Report%20to%20Congress.pdf> (accessed June 5, 2012).

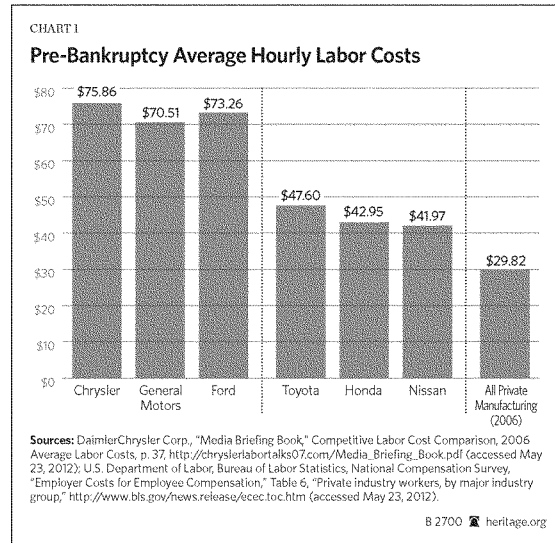
2. U.S. Department of the Treasury, “Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2012,” Figure 1.

3. Congressional Budget Office, “Report on the Troubled Asset Relief Program—December 2011,” December 16, 2011, Table 3, http://www.cbo.gov/sites/default/files/cbofiles/Attachments/12-16-TARP_report.pdf (accessed May 31, 2012). The CBO estimated this \$20 billion loss when GM’s stock traded at \$23.35 (price as of November 15, 2011). This is slightly higher (and the estimated losses thus slightly lower) than the value of GM stock assumed throughout this report of \$23.04, the opening price as of May 1, 2012.

4. U.S. Department of the Treasury, “Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2012,” Figure 2. The estimated loss of \$21.7 billion assumes a GM share price of \$26.02. At the price that GM shares opened with on May 1, 2012—\$23.04 a share—the Treasury Department’s 500 million shares are worth \$1.5 billion less, for a total loss of \$23.2 billion.

5. News release, “Remarks by the President to UAW Conference,” The White House, February 28, 2012, <http://www.whitehouse.gov/the-press-office/2012/02/28/remarks-president-uaw-conference> (accessed May 31, 2012). The claim that the automakers would have collapsed without an extensive government bailout is questionable. Todd Zywicki, “The Auto Bailout and the Rule of Law,” *National Affairs*, Issue 7 (Spring 2011), pp. 66–80.

6. See, for example, Paul Roderick Gregory, “American Airlines Shows the Corruption of Obama’s GM Bailout,” *Forbes*, February 6, 2012, <http://www.forbes.com/sites/paulroderickgregory/2012/02/06/american-airlines-shows-the-corruption-of-obamas-gm-bailout/> (accessed May 31, 2012).



Obama calls accusations that "paying back the unions" motivated his decision "a load of you know what."⁷ However, the Administration treated the UAW much more generously than the automakers' other creditors and other unions, and the UAW fared

much better than unions typically do in bankruptcy cases.

Bankruptcy Liabilities

General Motors and Chrysler had substantial liabilities entering bankruptcy—a major reason they

went bankrupt in the first place. General Motors owed \$6 billion to secured creditors and \$29.9 billion to unsecured creditors. Chrysler owed \$6.9 billion to first-lien secured creditors and \$2 billion to second-lien secured creditors.⁸ Chrysler also owed about \$5 billion to unsecured trade creditors, and owed billions more in obligations to dealers and for warranties.⁹

The United Auto Workers had also created significant liabilities for the automakers. The union raised Detroit's labor costs 50 percent to 80 percent above that of the transplant automakers, such as Toyota and Nissan. In 2006, General Motors paid its unionized workers \$70.51 an hour in wages and benefits. Chrysler paid \$75.86 an hour.¹⁰ These costs put the Detroit automakers at a significant competitive disadvantage.

Detroit's higher labor costs also included generous retirement and health care benefits. UAW employees at GM and Chrysler can collect pensions in their 50s.¹¹ The automakers also provided UAW retirees with full health coverage until they became eligible for Medicare. At that point UAW retirees collected generous additional health coverage from the automakers on top of Medicare. While the average Medicare recipient

7. News release, "Remarks by the President to UAW Conference."

8. Congressional Oversight Panel, "September Oversight Report," September 9, 2009, Figures 1 and 2, <http://cybercometery.unt.edu/archive/cop/20110402043042/http://cop.senate.gov/documents/cop-090909-report.pdf> (accessed May 31, 2012). The bankruptcy courts have recognized \$29.9 billion (not the initial \$27 billion estimate) in claims against GM. See "Motors Liquidation Company GUC [General Unsecured Creditors] Trust: Quarterly GUC Trust Reports as of December 31, 2011," January 30, 2012, <https://www.mlguctrust.com/Download-KeyDocument.aspx?Document=44> (accessed May 31, 2012).

9. Deniz Anginer and A. Joseph Warburton, "The Chrysler Effect: The Impact of the Chrysler Bailout on Borrowing Costs," paper presented at the Federal Reserve Bank of Cleveland's Conference on Resolving Insolvent Large and Complex Financial Institutions, April 14-15, 2011, p. 8, http://www.clevelandfed.org/research/conferences/2011/4-14-2011/Anginer_Warburton.pdf (accessed May 31, 2012).

10. DaimlerChrysler, "Media Briefing Book," Competitive Labor Cost Comparison, p. 37, http://chryslerlabortalks07.com/Media_Briefing_Book.pdf (accessed June 6, 2012).

11. General Motors, "GM Manufacturing and Labor Resources Media Handbook: Pension Plan," p. 22, http://web.archive.org/web/20090126012238/http://www.media.gm.com/manufacturing/handbook/pensions_401k.pdf (accessed June 6, 2012). Note that the average age at retirement of a GM hourly employee is 56.

spends \$4,200 a year out of pocket,¹² UAW retirees in 2011 had maximum out-of-pocket expenses of \$285.¹³

To reduce the financial burden of these benefits, the Detroit automakers negotiated a Voluntary Employee Beneficiary Association (VEBA)¹⁴ with the UAW in 2007. The VEBA—funded by the automakers and partially controlled by the UAW—assumed financial responsibility for retiree health benefits. When General Motors filed for bankruptcy in 2009 it owed \$20.6 billion to the UAW Retiree Medical Benefits Trust.¹⁵ Chrysler owed the VEBA \$8 billion.¹⁶ These obligations were unsecured.

By 2009, General Motors and Chrysler lacked the money to pay their creditors, including the UAW. The Obama Administration rightly required both automakers to file for bankruptcy as a condition of receiving further money from the government.

Violating Principles of Bankruptcy

A cornerstone of bankruptcy policy is the requirement that creditors' priorities are preserved in bankruptcy in the same order as they

are preserved outside bankruptcy, a concept known as the "absolute priority rule." The fundamental difference in priorities is between secured creditors on one hand and unsecured creditors on the other. Secured creditors, such as the bank that issues a mortgage or loans money to buy a car, have the right to seize the identified property if people fail to make payments. Unsecured creditors, such as credit card issuers, can sue individuals personally if they do not pay their bills, but cannot foreclose on someone's house unless mortgage holders are paid off first. Secured credit, therefore, is less risky than unsecured credit because it is a guarantee that the lender will be paid before unsecured creditors are paid. In exchange, debtors pay a lower interest rate to borrow on a secured loan (just as mortgage interest rates are much lower than credit card interest rates).

While most companies (including General Motors) are able to fund their operations through the issuance of unsecured bonds, Chrysler's bonds were secured, a testament to Chrysler's chronic financial struggles and the risk of lending to the company.¹⁷ In bankruptcy, the

secured status of these bonds should have meant that the secured creditors would be paid in full before any money was allocated to subordinate creditors, such as the UAW's VEBA plans. Instead, the plan imposed by the government forced Chrysler's secured creditors to accept only 29 cents on the dollar, while the UAW recovered most of the value of its claims.

Another bankruptcy principle was also violated in both cases. A fundamental principle of bankruptcy law is the presumption that similarly situated creditors should receive similar treatment in bankruptcy unless there is a compelling reason to do otherwise.¹⁸ Thus, all unsecured creditors should be treated similarly regardless of whether their claims arise from bonds or unfunded pension liabilities. Yet, in both cases, the UAW's unsecured claims were treated much more generously than other unsecured creditors.

Preferential Treatment for the Union Trust Fund

The UAW's claims had the same legal priority as those of other unsecured creditors. However, the union did substantially better in the

12. Kaiser Family Foundation, "Medicare Chartbook, Fourth Edition, 2010," November 4, 2010, Figure 7.4, <http://facts.kff.org/chart.aspx?cb=58§n=168&ch=1788> (accessed May 31, 2012).

13. Sharon Terlep and Matthew Dolan, "Pension Trusts Strapped," *The Wall Street Journal*, November 7, 2011, <http://online.wsj.com/article/SB10001424052970203707504577011901934288534.html> (accessed May 31, 2012).

14. The VEBA is formally called the UAW Retiree Medical Benefits Trust. Although technically a separate entity, the UAW VEBA exists solely to provide benefits to UAW members, and the terms UAW and UAW VEBA are used interchangeably in this *Background*.

15. Bankruptcy petition filed by General Motors Corporation in the U.S. Bankruptcy Court, Southern District of New York, June 1, 2009, http://docs.motorsliquidationdocket.com/pdf1b/01_50026.pdf (accessed May 31, 2012). The \$20.6 billion excludes the assets in the GM "internal VEBA," which were also transferred to VEBA.

16. Congressional Oversight Panel, "September Oversight Report," Figure 1. See also the testimony of Ron Bloom before the Congressional Oversight Panel, "Regarding the Treasury's Automotive Industry Financing Program, July 27, 2009. The \$8 billion excludes the approximately \$2 billion in assets in the Chrysler "internal VEBA," which were also transferred to the UAW VEBA.

17. Ford, beset by similar financial struggles, funded its turnaround through the issuance of secured debt as well, pledging as collateral, among other items, the famous blue "Ford" oval nameplate.

18. 11 USC, §1123(a)(4) requires that a bankruptcy plan of reorganization "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

TABLE 1

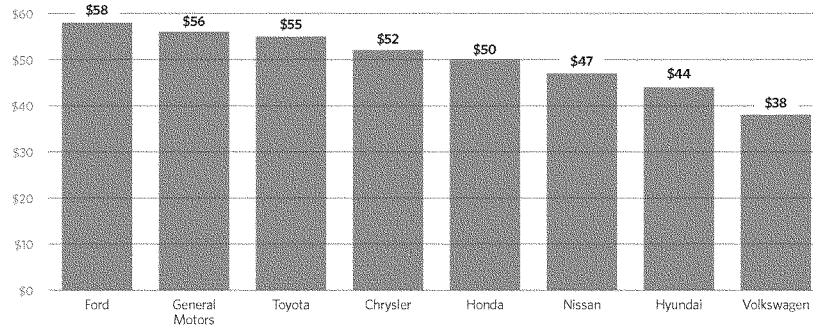
UAW and Junior Creditors Debt Collection in Bankruptcy

	GENERAL MOTORS			CHRYSLER		
	Unsecured Creditors	UAW VEBA		Second Lien Creditors	Unsecured Trade Creditors	UAW VEBA
Debts Owed in 2009	\$29.9 billion	\$20.56 billion		\$2 billion	\$5 billion	\$8 billion
		Debt Collection Proportional to Unsecured Creditors	Actual Collection			Debt Collection Proportional to Unsecured Creditors Actual Collection
Collected in Bankruptcy	10 percent of new GM	6.9 percent of new GM	17.5 percent of new GM (sold \$3.4 billion worth of shares Nov. 2010, still holds 160.2 million shares worth \$3.7 billion at current prices)	\$0	\$0	\$0 55 percent of New Chrysler (subsequently diluted to 41.5 percent)
	Warrants to buy 7.5 percent of new GM for \$10/share	Warrants to buy 5.2 percent of new GM for \$10/share	Note payable for \$2.5 billion (repaid by GM for \$2.8 billion in Oct. 2010)			Note payable for \$4.6 billion at a 9 percent interest rate
	Warrants to buy 7.5 percent of new GM for \$18.33/share	Warrants to buy 5.2 percent of new GM for \$18.33/share	260 million shares of perpetual preferred stock paying a 9 percent dividend, face value of \$6.5 billion			
			Warrants to purchase 45.5 million shares of GM stock at \$42.31 a share			
Present Value (2012)	\$8.1 billion	\$5.6 billion	\$17.8 billion	\$0	\$0	\$0 \$9.2 billion
Present Value of Preferential Treatment		\$12.2 billion				\$9.2 billion

Sources: Heritage Foundation calculations. See footnotes and methodology for data sources and details of calculations.

CHART 2

Average Hourly Labor Costs Among U.S. Automakers in 2011



Source: Center for Automotive Research, "2011 Detroit 3-UAW Labor Contract Negotiations," November 29, 2011, <http://www.cargroup.org/?module=Publications&event=View&pubID=36> (accessed May 29, 2012).

B 2700 heritage.org

bankruptcy. For their \$29.9 billion in claims, General Motor's unsecured creditors received 10 percent of the stock of New GM, and warrants to purchase 15 percent more at preferred prices.¹⁹ When they were distributed those shares and warrants were worth, in present value, \$8.1 billion.²⁰

Had the Administration treated the UAW VEBA as it did other unsecured creditors, the VEBA would have recovered the same proportion

of its debts. General Motors' \$20.6 billion obligation to the UAW would have been exchanged for 6.9 percent of the stock of New GM, and warrants to purchase 10.3 percent more at preferred prices. Those stocks and warrants would have been worth, in present value terms, \$5.6 billion.²¹

Instead, the United Auto Workers collected far more of its debts than the other unsecured creditors did. The VEBA received 17.5 percent ownership of New GM, \$6.5 billion of

perpetual preferred stock paying a 9 percent dividend, and a note payable for \$2.5 billion (repaid early for \$2.8 billion).²² The UAW sold a portion of its stake in New GM for \$3.4 billion in late 2010.²³ The UAW VEBA still owns about 10 percent of New GM. Its remaining stake is worth \$3.7 billion at current market prices. In present value terms, the UAW VEBA recovered a total of \$17.8 billion.²⁴

If the UAW VEBA had been treated like GM's other unsecured

19. "Motors Liquidation Company GUC [General Unsecured Creditors] Trust: Quarterly GUC Trust Reports as of December 31, 2011." The series A warrants were intended to purchase 7.5 percent of GM at \$10 a share; the series B warrants were intended to purchase 7.5 percent of GM at \$18.33 a share.

20. Heritage Foundation calculations from the "Quarterly GUC Trust Reports as of December 31, 2011." See the appendix for the methodology.

21. See the appendix for the methodology.

22. U.S. Securities and Exchange Commission, "General Motors Corporation," Form 8-K, May 28, 2009, <http://www.sec.gov/Archives/edgar/data/40730/000119312509119940/d8k.htm> (accessed May 31, 2012). The VEBA also received warrants to purchase additional shares of GM if the market capitalization of the company exceeds \$75 billion before December 15, 2031. That is roughly twice GM's current market capitalization. GM has the option of repurchasing the perpetual preferred stock for \$6.5 billion after December 31, 2014.

23. Joann Muller, "UAW Cashes In on GM IPO; Pledges to Help GM Stay Viable," *Forbes*, November 18, 2011, <http://www.forbes.com/sites/joannmuller/2010/11/18/uaw-cashes-in-on-gm-ipo-pledges-to-help-gm-stay-viable/> (accessed May 31, 2012).

24. See the appended methodology for details of this calculation.

creditors, the bailout would have cost taxpayers \$12.2 billion less. The union received highly preferential treatment.

The same thing happened at Chrysler. Chrysler's first-lien secured creditors collected \$2 billion on their \$6.9 billion in debt—just 29 cents on the dollar. Chrysler's second-lien secured creditors received nothing in bankruptcy for their \$2 billion in debt.²⁵ They were completely wiped out. Chrysler's unsecured trade creditors also recovered none of the \$5 billion they were owed.

Legally, the UAW's claims had lower priority than those of all secured creditors. The union should have recovered nothing on its claims until secured creditors—both first-lien and second-lien—were paid in full. Since the first-lien creditors were only partially paid and the second-lien creditors were wiped out, the UAW would have normally, along with the other unsecured creditors, recovered nothing. The Administration decided nonetheless to give the UAW trust a 55 percent ownership stake in New Chrysler (subsequently diluted to 41.5 percent), currently worth \$3.46 billion, and a note payable for \$4.6 billion earning 9 percent interest.²⁶ The UAW trust recovered most of the value of its claims.

If those assets had gone to the Treasury, the bailout would have

cost taxpayers—in present value terms—\$9.2 billion less.²⁷ Instead, the Administration gave those assets to the UAW, despite bankruptcy law assigning their debts lower priority.

Limited Concessions by Union Members

Section 1113 of the Bankruptcy Code gives bankruptcy courts explicit authority to force the rewriting of collectively bargained union contracts—like other contracts—in order to help the company become viable again. Just as bankruptcy courts reduce unsupportable debts in order to rehabilitate a company, they also reduce unsupportable union compensation and practices to competitive rates so that the company will be viable post-bankruptcy. In April 2012, for instance, the recently bankrupt American Airlines broke its union contracts after months of wrangling between management, and after the unions failed to produce a revised agreement. In other cases, the mere threat by a bankrupt company of breaking the union contract is sufficient to extract wage and benefit concessions from recalcitrant unions, as happened when Delta and United Airlines filed bankruptcy.

With GM, the UAW made some concessions during the 2009 bankruptcy. The union allowed GM to expand the use of entry-level “Tier 2” workers making half as much as

regular workers.²⁸ This was a significant concession—by current employees on behalf of future employees.

The UAW also accepted limited concessions for existing “Tier 1” members. The union agreed to suspend their cost-of-living adjustments and performance bonuses. The union also agreed to reduce paid time off and place restrictions on overtime. The union further agreed to eliminate the JOBS bank that paid laid-off employees nearly full wages for not working.²⁹

These changes reduced the automakers' costs, but they left most of the existing members' compensation structure. As a result, GM's post-bankruptcy compensation of \$56 an hour averaged across regular Tier 1 and entry-level Tier 2 employees is still higher than all the transplants.³⁰ The Tier 1 workers' labor will still cost \$64 an hour at the end of the current contract.³¹ As the UAW explained it to its members, “For our active members these tentative changes mean no loss in your base hourly pay, no reduction in your healthcare, and no reduction in pensions.”³²

Even President Obama's “car czar” Steven Rattner has admitted that the UAW should have made larger concessions on wages and that doing so would have substantially reduced the cost of the bailouts. Rattner stated: “We asked all the stakeholders to

25. Congressional Oversight Panel, “September Oversight Report,” Figure 1.

26. UAW Retiree Settlement Agreement between New Carco Acquisition, LLC, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, April 2009.

27. This does not necessarily mean that the union profited from the bailout. See the methodology for an explanation of these calculations.

28. UAW General Motors, “Modifications to 2007 Agreement and Addendum to VEBA Agreement,” May 2009, at http://www.uawlocal1853.org/wp-content/uploads/uawgm_may2009.pdf (accessed May 31, 2012), and Center for Automotive Research (CAR), “2011 Detroit 3-UAW Labor Contract Negotiations,” November 29, 2011, <http://www.cargroup.org/?module=Publications&event=View&pubID=36> (accessed May 31, 2012).

29. UAW General Motors, “Modifications to 2007 Agreement and Addendum to VEBA Agreement.”

30. Center for Automotive Research, “2011 Detroit 3-UAW Labor Contract Negotiations.”

31. Ibid.

32. Ibid.

make very significant sacrifices. We should have asked the UAW to do a bit more. We did not ask any UAW member to take a cut in their pay.”³³

Lost Savings. In a normal bankruptcy, the pay and benefits of existing union members likely would have been reduced, probably to prevailing labor market rates. Only the taxpayer bailout allowed the UAW to avoid this. Moreover, one reason why the Senate rejected a bailout of the automakers in December 2008 was the UAW’s refusal to reduce their compensation to market rates.³⁴ But once the decision was made to divert already appropriated TARP funds to the task—a use that Treasury Secretary Henry Paulson initially deemed to be beyond the scope of the legitimate use of the TARP funds—neither the Bush nor Obama Administrations pressed this point.

If the bankruptcy had lowered GM’s average labor costs down to market rates, its costs would have fallen by \$800 million a year. Such concessions would have reduced operating costs and the size of the government’s infusion of funds into the companies. They would have also raised profitability and thus the value of the government’s stake in

GM. These concessions would have saved taxpayers—in present value terms—approximately \$4.1 billion.³⁵

Unionized Delphi Retirees Treated Differently. UAW members also received preferences at Delphi, the auto parts manufacturer and former GM subsidiary. When GM spun off Delphi, the automaker agreed to supplement Delphi’s UAW members’ pensions if the company went bankrupt. Delphi did go under, and in 2009 filed to have the Pension Benefit Guarantee Corporation (PBGC) take over its pension plan.

When the PBGC takes over pension benefits it guarantees them, but only to a limit. When Delphi filed for bankruptcy the maximum pension benefits were \$54,000 a year for retirees aged 65 and above, with lower benefits for early retirees.³⁶ About half of Delphi’s union and non-union workers faced reductions in their pension benefits.³⁷

New GM no longer had an obligation to supplement the Delphi pensions. The bankruptcy filing eliminated its contractual obligation to do so. However, New GM’s management—while being overseen by the Obama Administration—nonetheless agreed to spend \$1 billion

to supplement the pensions of Delphi’s UAW retirees. The non-union employees were not so fortunate—GM did not supplement their pensions.³⁸

The TARP Inspector General is now investigating whether the Administration pressured GM to give the UAW special treatment. However, former Administration officials—including “car czar” Ron Bloom, Rattner’s successor—have refused to cooperate with the investigation or answer questions. The Inspector General “believes the Auto Task Force played a role in the pension decision,” but lacks the legal authority to force it to testify.³⁹

Had New GM treated Delphi’s UAW and non-union employees equally, the Treasury could have paid \$1 billion less for the bailout. Instead, some workers became more equal than others.

UAW Favored Over Other Unions

The Obama Administration also favored the UAW over other unions during the bankruptcy proceedings. At Delphi some retirees belonged to the International Union of Electrical Workers (IUE) and to the United

33. Alex Nishimoto, “Rattner Says UAW Wages Should Have Been Cut During Bailouts,” *Motortrend*, December 16, 2011, <http://wo1.motortrend.com/rattner-says-uaw-wages-should-have-been-cut-during-bailouts-147425.html#ixzz1saq52d2e> (accessed May 31, 2012).

34. These concessions reportedly were demanded primarily by southern Senators, such as Bob Corker (R-TN), as those states are home to numerous transplant factories, and they objected to bailing out Detroit’s overpaid workers on the backs of their home-state constituents. See Josiah Ryan, “UAW Must Make Concessions in Exchange for Auto Bailout, Republican Says,” *CNSnews.com*, December 12, 2008, <http://cnsnews.com/news/article/uaw-must-make-concessions-exchange-auto-bailout-republican-says> (accessed May 31, 2012).

35. This is an approximation. Investors would probably view GM more favorably if the UAW made deeper concessions than it did, raising its price-earnings ratio above its historical rates.

36. U.S. Government Accountability Office, “Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits,” Report to Congressional Requesters, GAO-12-168, December 2011, Table 2, <http://www.gao.gov/assets/590/587045.pdf> (accessed May 31, 2012).

37. *Ibid.*, Table 3.

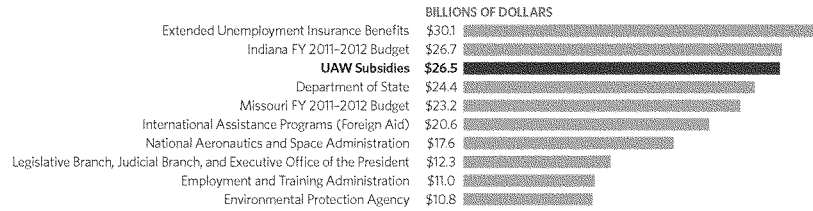
38. *Ibid.*

39. Letter from Christy Romero, Special Inspector General for TARP, to Representatives Darrell Issa, Michael Turner, and Elijah Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, May 9, 2012, http://turner.house.gov/UploadedFiles/5-9-12_TO_MRT_-_SIGTARP_Letter_RE_Former_Task_Force_Employees_Refusing_to_Testify.pdf (accessed May 31, 2012).

BACKGROUNDER | NO. 2700
JUNE 13, 2012

CHART 3

UAW Subsidies and Other Federal Expenditures



Note: Agency budgets are for FY 2011. The cost of extended unemployment insurance benefits is for March 1–December 31, 2012.

Sources: U.S. Office of Management and Budget, Budget of the United States Government, Fiscal Year 2011: Historical Tables (Washington, DC: U.S. Government Printing Office, 2010), Table 4.1, "Outlays by Agency, 1962–2017," figures are for 2011, <http://www.whitehouse.gov/omb/budget/Historicals> (accessed June 6, 2012); U.S. Department of Labor, "FY 2013 Congressional Budget Justification: Employment and Training Administration," <http://www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V1-03.pdf> (accessed May 30, 2012); Congressional Budget Office cost estimate for H.R. 3630, February 16, 2012, <http://www.cbo.gov/publication/43009> (accessed May 30, 2012); and Indiana and Missouri state budget reports as explained in footnote 47.

B 2700 heritage.org

Steelworkers (USW). GM did not supplement their pensions either—only the UAW's members received the pension boost.⁴⁰

GM employees who belonged to other unions received particularly harsh treatment. Approximately 2,500 employees at GM's Moraine, Ohio, assembly plant belonged to the IUE. They were among GM's most productive workers. When GM negotiated its 2007 contract with the UAW, it agreed to transfer work from Moraine to UAW facilities. The bankruptcy deal that the Administration oversaw barred these laid-off IUE members from transferring to any of the UAW facilities. While GM has

rehired many laid-off UAW members, IUE employees have remained on the sidelines.⁴¹

Bailout Losses Entirely Due to UAW Subsidies

Adding all of this together—the disproportionate recovery of debts for the UAW trust funds, allowing the UAW to retain above-market pay, and subsidizing Delphi's unionized pensions—we estimate that the Administration redistributed \$26.5 billion more to the UAW than it would have received had it been treated as it usually would in bankruptcy proceedings.⁴² Taxpayers lost between \$20 billion and \$23 billion

on the auto programs.⁴³ Thus, the entire loss to the taxpayers from the auto bailout comes from the funds diverted to the UAW.

Had the government treated the UAW in the manner required by bankruptcy law, the taxpayers would have been able to recoup their entire investment in the company. The program would have amounted to subsidized loans instead of a direct bailout. The Administration could have kept the automakers running without losing a dime.

Accomplishing this would have been straightforward. At Chrysler, the Treasury—not the UAW—could have received the \$4.6 billion note

40. U.S. Government Accountability Office, "Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits."

41. Sharon Terlep, "UAW Freezes Rival Out of Rebound," *The Wall Street Journal*, April 29, 2012, <http://online.wsj.com/article/SB10001424052702304177104577307184099140656.html> (accessed June 5, 2012).

42. These figures are in present value terms.

43. These figures only include losses from taxpayer dollars spent by the government. They may underestimate the full impact of the bailout, as they exclude indirect taxpayer losses, such as the preferential tax treatment provided for Net Operating Losses and the "Cash for Clunkers" program.

and ownership of 41.5 percent of the company.⁴⁴ At General Motors, the bankruptcy process could have operated normally, reducing GM's compensation to market levels and raising the value of the government's shares. The Treasury could have also received the \$2.5 billion note, the \$6.5 billion in preferred stock, and the excess shares of GM given to the union. The Administration could have directed the firm not to treat Delphi's UAW members better than non-union retirees and put less money into GM. Had the Administration done so American taxpayers would not have lost \$23 billion.

Preferential treatment for the UAW was not necessary to keep GM or Chrysler in business. The UAW did not plan on organizing a strike in 2009. Even if it had, General Motors and Chrysler would have had no difficulty filling entry-level positions even though they paid less than transplant automakers.⁴⁵ The auto bailout was actually a UAW bailout.

The Staggering Size of the Bailout

President Obama handed the United Auto Workers \$26.5 billion—more than the U.S. spent on

all foreign aid programs in 2011 (\$20.6 billion). The union collected 50 percent more than NASA's \$17.6 billion budget for 2011,⁴⁶ more than Missouri's state budget (\$23.2 billion), and almost as much as Indiana's state budget (\$26.7 billion).⁴⁷ The UAW subsidies cost twice as much as Congress spent last year on the Executive Office of the President, the legislative branch, and the judicial branch combined (\$12.3 billion);⁴⁸ more than the Department of Labor spent on job training programs (\$11.0 billion);⁴⁹ and almost as much as the cost of keeping federally funded extended unemployment insurance benefits in place in 2012 (\$30.1 billion).⁵⁰

Consequences for UAW Members. This spending greatly benefited the UAW and its members. Without the Administration's favoritism, the union VEBAs would face a severe funding shortfall. This would force the union to increase the retirement age. UAW members would have had to wait until their 60s to collect retiree health benefits. The UAW would also have had to significantly reduce benefits for retirees enrolled in Medicare. The retiree health benefits would have become a modest supplement to Medicare.

Similarly, a smaller bailout would have required incumbent UAW members, not just new employees, to accept pay and benefit cuts. Average labor costs would have fallen to the same levels as the foreign transplants, approximately \$47 an hour. While this is still substantially higher compensation than the average manufacturing worker (\$32.90 an hour) it would still reduce UAW members' standard of living.⁵¹ Such cuts would be painful but typical for firms reorganizing in bankruptcy. Moreover, while the UAW's members were spared much of the pain of bankruptcy, other workers were not so lucky—most notably those belonging to other unions and those enrolled in the Indiana State Police Pension Trust and the Indiana State Teachers' Retirement Fund, which held Chrysler's secured bonds that lost value through the politicized bankruptcy process.

Consequences for Taxpayers. These benefits for UAW members do not justify a \$26 billion taxpayer handout. No one should, of course, begrudge well-paid workers their success. When it is earned, high compensation is good. If UAW members can earn \$70 an hour through their productivity they are entitled to

44. The Treasury actually received 6 percent of New Chrysler, which was subsequently sold to Fiat for \$500 million. Had the Treasury received the UAW's share, the government's stake in the company would have been 47.5 percent.

45. The average cost to the Detroit automakers of entry-level workers is \$33.70 an hour. Center for Automotive Research, "2011 Detroit 3-UAW Labor Contract Negotiations."

46. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables* (Washington, DC: U.S. Government Printing Office, 2010), Table 4.1: "Outlays by Agency, 1962-2017," figures are for 2011, <http://www.whitehouse.gov/omb/budget/Historicals> (accessed June 6, 2012).

47. Indiana State Budget Agency, "State of Indiana List of Appropriations," 2011, p. B-2, http://www.in.gov/sba/files/ap_2011_all.pdf (accessed May 31, 2012), and Missouri Office of Administration, Division of Budget and Planning, "FY 2013 Budget Summary," January 17, 2012, p. 2, <http://oa.mo.gov/bp/pdffiles/2013presspacket.pdf> (accessed May 31, 2012).

48. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables*.

49. U.S. Department of Labor, "FY 2013 Congressional Budget Justification: Employment and Training Administration," p. 23, <http://www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V1-03.pdf> (accessed May 31, 2012). Figures are for FY 2011.

50. Congressional Budget Office cost estimate for H.R. 3630, "H.R. 3630, Middle Class Tax Relief and Jobs Creation Act of 2012," February 16, 2012, <http://www.cbo.gov/publication/43009> (accessed May 31, 2012). H.R. 3630 extended benefits from the beginning of March to the end of December 2012.

51. Department of Labor, Bureau of Labor Statistics, "Employer Costs for Employee Compensation," Table 6, 2011.

the fruits of their labor. Those who succeed because of their own efforts have earned their high pay.

However, highly compensated workers should not be entitled to automatically continue to receive high pay. They must continue to earn it through their productivity. If their compensation contributes to their companies' bankruptcy they should not be allowed to maintain their living standards by taxing their fellow citizens.

UAW members at General Motors and Chrysler are among the most highly paid workers in America. They received more than \$70 an hour in wages and benefits before the bankruptcy, and between \$52 and \$56 an hour now. The average American worker—whose taxes paid for the bailout—earns \$30.15 an hour in wages and benefits.⁵² Few Americans

have the ability to retire before they can collect Social Security. Fewer still receive retirement health coverage in addition to Medicare.

Conclusion

The Obama Administration defends the cost of the auto bailout on economic grounds. The President argues that providing the money was necessary to prevent an economic catastrophe. But even if government intervention for the limited purpose of providing post-bankruptcy financing was deemed necessary due to the illiquidity of credit markets at the time, there was still no rationale for diverting tens of billions of taxpayer dollars (including taxes paid by the employees of the UAW's lower-paid competitors) to the UAW. The preferences given to the UAW account for the entire net cost of the bailout. The

bailout would have cost \$26.5 billion less had the UAW been treated like GM's and Chrysler's other creditors. Instead, the Administration violated basic principles of bankruptcy law and transferred that money to the UAW—at taxpayer expense.

—**James Sherk** is Senior Policy Analyst in Labor Economics in the Center for Data Analysis at The Heritage Foundation. **Todd Zywicki** is a law professor at George Mason University School of Law and a Senior Scholar at the Mercatus Center at George Mason University. The authors are grateful to Kurt Rotthoff, Assistant Professor of Economics and Finance at Seton Hall University, for his assistance with the calculations in this report.

52. Ibid., Table 1.

Appendix Methodology

This *Background* estimates the costs to taxpayers of the more favorable treatment given to the United Auto Workers (UAW) compared to similarly situated creditors in the auto bailout. We compared the amount that the UAW received to the amount it would have received given equal treatment, expressed in present values.

Throughout this *Background*, the current share price of GM stock was taken as its opening price on May 1, 2012, of \$23.04. A \$1 decrease/increase in GM's share price will increase/decrease taxpayer losses by approximately \$500 million and will decrease/increase the UAW's recovery by approximately \$160 million.

Chrysler VEBA

Chrysler's secured first-lien creditors collected only \$0.29 per dollar of debt that they were owed, and Chrysler's secured second-lien creditors and unsecured trade creditors collected nothing. Since the VEBA's \$8 billion in debt was unsecured, the union would normally have also collected nothing. Consequently, the cost of the bailout was assessed as the cost of the assets which the union VEBA received, and which could have gone to the Treasury Department instead.

We assume for purposes of analysis that the payout to senior creditors of Chrysler is invariant regardless of whether the subsequent return went to the government or the UAW. So, we assume that the payout from the Chrysler note and equity is the same under either scenario, but simply

that it went to the government instead of the UAW.

The stock of new Chrysler is not currently publicly traded. The UAW's stake in Chrysler (41.5 percent) was valued using the \$8.33 billion market capitalization implied by the Treasury's sale of its 6 percent ownership of Chrysler to Fiat for \$500 million. That values the union's shares at \$3.46 billion.

The \$4.6 billion note was valued by bringing past payments into the present using the interest rate of a treasury bill of that maturity to reflect the Treasury's cost of borrowing. For example, the \$315 million interest payment made on July 15, 2010, was brought forward using the interest rate of a two-year treasury bill issued on July 15, 2010, of 0.61 percent.

We discounted future payments using a higher interest rate to reflect the risk that they may not be paid. Throughout negotiations with the automakers, the UAW assumed a 9 percent discount rate on future obligations. To maintain comparability with the UAW's estimates, and to avoid differences resulting from separate choices of discount rates, we discounted future payments throughout this *Background* at 9 percent. Arguments can be made for a lower discount rate. Choosing a lower rate would increase the present value of the assets—and thus the subsidy—given to the UAW.

The total value of the UAW's recovery is the sum of the value of the union's shares and the present value of the past and future

payments on the note payable—\$9.2 billion.

Note that the UAW did not necessarily profit on the bailout at Chrysler. The \$8 billion reflects the discounted present value of payments in April 2009 that GM was obligated to make to VEBA. The \$9.2 billion figure is expressed as a present value in 2012; and we used a different discount rate to bring past payments forward than the \$8 billion used to bring future payments into the present. As a result the calculations treat payments owed or made between 2009 and 2012 differently, and the figures are not directly comparable.

General Motors VEBA

General Motors' unsecured creditors were owed \$29.9 billion and received 10 percent of New GM, warrants to purchase 7.5 percent of New GM at \$10 a share (series A warrants), and warrants to purchase another 7.5 percent at \$18.33 a share (series B warrants).

Data on the distribution of stocks and warrants to unsecured creditors were taken from the General Unsecured Creditors Trust.⁵³ The value of the stocks and warrants already distributed was assessed at the opening price of GM stock on the days they were distributed. The remaining undistributed 29.5 million shares and 53.7 million warrants for GM stock were valued at GM's current share price. Past payments were also brought into the future using the interest rate on Treasury securities to calculate the present

53. "Motors Liquidation Company GUC [General Unsecured Creditors] Trust: Quarterly GUC Trust Reports as of December 31, 2011," January 30, 2012, <https://www.mlguctrust.com/Download-KeyDocument.aspx?Document=44> (accessed June 5, 2012).

value. The total present value of the shares and warrants distributed to unsecured creditors is \$8.1 billion.

At the time of the bankruptcy GM owed the UAW VEBA \$20.56 billion in unsecured payments. If these obligations received equal treatment with the other unsecured creditors the union would have received $\$20.65 \text{ billion} \div \$29.9 \text{ billion} = 68.7$ percent of the equities given to the bondholders. This recovery would amount to 6.9 percent of New GM (103 million shares), series A warrants for 5.16 percent of the company (93.7 million warrants), and series B warrants to purchase another 5.16 percent (93.7 million warrants). Valued at GM's opening stock price on the days the shares and warrants were distributed to the unsecured creditors, these equities would be worth \$5.6 billion.

An alternative assumption is that the UAW received these shares before the initial public offering (IPO). In that case, had the UAW VEBA used the same investment strategy that it followed with its actual holdings of selling 100 million shares at the IPO and retaining the rest of the shares and warrants in its portfolio, the UAW VEBA's recovery would have been \$5.1 billion. The UAW received 260 million common shares of New GM, \$6.5 billion in perpetual preferred stock paying a 9 percent dividend, and a note payable for \$2.5 billion that was repaid in October 2010 for \$2.8 billion. The UAW sold 100 million of these shares at the IPO for \$34 a share, raising \$3.4 billion, and retains 160,150,000 shares in its portfolio. The value of the note payable, the already paid dividend payments, and the shares sold in the IPO were expressed in present values using the appropriate short-term treasury bill rates on those dates. The value of the

unsold shares of GM was calculated using the opening price of GM stock on May 1, 2012, of \$23.04 a share—\$3.690 billion. Future dividend payments and the repurchase of the \$6.5 billion in preferred stock on December 31, 2014, were discounted using the 9 percent discount rate. The total present value of the UAW's receipts was \$17.8 billion.

The difference between the value of the UAW's actual collection and the value of a proportional collection is the cost to the Treasury of the UAW preferences—\$12.2 billion.

Delphi Retirees

The decision to supplement Delphi's unionized retiree's pensions cost GM an estimated \$1 billion as of December 2010. It was assumed that had GM not done so the Treasury would have reduced its investment in GM by \$1 billion (as of December 2010) with no loss in business performance. The \$1 billion was expressed in present value using the appropriate treasury bill rate.

Labor Costs

Average hourly labor costs for UAW members remain above the rates paid by transplant automakers. We assumed that, without special preferences for the UAW, the GM bankruptcy would have reduced hourly labor costs to the midpoint of the transplants—\$47 an hour. This \$9 an hour reduction in GM's labor costs, multiplied by 48,000 hourly employees working 35.5 hours a week for 52 weeks a year, would have reduced GM's labor costs by approximately \$800 million a year. These costs are approximations. GM plans to increase its workforce, which would increase the value of these concessions.

The value of these concessions to the Treasury Department was

assessed by assuming this \$800 million a year was retained entirely as profits and that investors assigned the same price-earnings (P/E) ratio to GM as they did historically. These estimates should be taken as an approximation. It is likely that management would have invested a portion of these savings elsewhere. It is also likely that with lower labor costs and greater investments investors would value the company more highly than they currently do. This would raise GM's P/E ratio. However, reliably quantifying how much GM's P/E ratio would hypothetically rise is not possible. We used GM's historical P/E ratio and counted all savings as profits to avoid such speculation.

At the P/E ratio at which GM's shares sold in the IPO—approximately 12—an extra \$800 million in earnings would have increased GM's market capitalization by \$9.6 billion, and the value of the 28 percent of the company the Treasury Department sold, by \$2.7 billion. As of May 1, 2012, GM traded at a P/E ratio of approximately 6.7. Increasing earnings by \$800 million a year would raise GM's market capitalization by \$5.4 billion, and the Treasury Department's remaining 26.5 percent (fully diluted) stake, by \$1.4 billion. Forgone past payments were brought into the present using the appropriate short-term treasury bill rate. In present value terms, maintaining UAW compensation above market rates thus cost taxpayers an estimated \$4.1 billion.

General Motors owes about \$20 billion in unfunded UAW pension obligations, one of the major factors depressing its share price. Bankrupt companies often discharge these obligations to the Pension Benefit Guarantee Corporation (PBGC). The PBGC guarantees pension benefits up to a maximum amount.

Discharging the pension obligations would have reduced pension benefits for many UAW retirees while raising costs for the government and increasing the value of GM stock. The Administration directed GM not to discharge its pension obligations. We assume that if minimizing taxpayer losses had been an Administration priority it would have similarly directed General Motors not to transfer its pension obligations to the PBGC. This represents a departure from normal

bankruptcy practice, which focuses on returning the company to viability, not minimizing taxpayer losses. Had GM discharged its pension obligations, the Treasury would have recovered a substantial portion—but not all—of the PBGC losses through the resulting appreciations of the government's shares in the company.

Discounting Values

Because these events occurred over different periods of time, the present time of each transaction

is discounted to the present time period, providing an accurate estimation of the current value of the preferential treatment. Transactions occurring in the past used the (then current) treasury bill rate, for the appropriate length of time, to calculate the present value of this transaction. Following the assumptions made by the UAW, events occurring in the future use a 9 percent discount rate.

Statement for the Record
By
The Hon. Paul Ryan
(First District of Wisconsin)

Mr. Chairman,

I applaud the House Oversight and Government Reform Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs decision to hold a hearing to discuss 'The Administration's Auto Bailouts and the Delphi Pension Decisions: Who Pick the Winners and Losers?' Congress has requested that the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) conduct an audit of the Department of the Treasury's role in the decisions that greatly affected Delphi salaried employees' pension plans, but their work has been stalled by a lack of cooperation from former members of President Obama's Task Force on the Auto Industry. As those members now testify before this subcommittee, it is my hope that this hearing provides some insight and clarification to this issue.

Given the impact of two Delphi plant closures on the First District of Wisconsin, I have continued to request further information into the handling of the Delphi salaried retiree pensions. During a Ways and Means Committee hearing on February 3, 2010, I had the opportunity to raise this issue to U.S. Treasury Secretary Timothy Geithner. Specifically, I requested he provide a written explanation of any Federal role in the decision to terminate Delphi's pension plans, as well as his department's acquiescence to General Motors' emergence from bankruptcy without honoring its commitment to the Delphi salaried retirees. I also reiterated the effects of this decision on families in Wisconsin, and asked him to respond directly to three specific questions concerning his department's role in these decisions. I have yet to receive a response.

Former workers and their families have suffered a great deal as a result of the Delphi plant closures, and the inconsistent treatment of pension benefit plans has added further uncertainty to their situation. I am pleased that the House Oversight and Government Reform Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs continues to remain dedicated to providing American taxpayers, Delphi salaried retirees in particular, with the answers that they deserve.

CAR Research Memorandum

**The Impact on the U.S. Economy of the
Successful Automaker Bankruptcies**

November 17, 2010



1000 Victors Way, Suite 200

Ann Arbor, Michigan 48108

734-662-1287

www.cargroup.org

Introduction

In late 2008 and throughout much of 2009, the global economy was in recession and the world's automotive industry was in crisis. In the United States, automotive sales plummeted to historically low levels, both automotive commercial and consumer credit availability contracted sharply, and critically, two major automotive manufacturers—General Motors and Chrysler—were on the brink of collapse. Across the globe, federal, state and provincial governments stepped in to provide aid to the Detroit-based automakers with operations in their countries. These loans and other financial assistance provided to General Motors and Chrysler by the U.S. and foreign governments averted certain economic catastrophe had the companies been allowed to fail. Now that sufficient time has passed since the U.S. policy intervention, it is possible to evaluate the magnitude of the economic disaster averted, and weigh the public and private benefits against the public cost of aid to General Motors and Chrysler.

The View from 2008 and 2009

Throughout the debate on whether the U.S. government should intervene to save the U.S. automotive industry, there was general agreement that the failure of General Motors and Chrysler would cause harm to the U.S. economy. The magnitude of the potential employment and economic impacts, the size of the government response, and the precedent that would be set by government action were the focus of intense debate.

On November 4, 2008, CAR produced the first rigorous estimate of job loss and economic impact related to the 2008 automotive crisis in a research memorandum entitled, "The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers."¹ As the decision on whether to proceed with structured bankruptcies of General Motors and Chrysler was being debated in the Spring of 2009, CAR produced a second research memorandum entitled, "The Impact on the U.S. Economy of Successful versus Unsuccessful Automaker Bankruptcies."² Several other industry analysts, economists, policy organizations, and government offices—including the White House—also weighed in on the issue of how big the economic impact would be if one or more of the Detroit Three automakers were to fail.³

¹ McAlinden, Sean P., Kristin Dzikczek and Debra Maranger Menk, **CAR Research Memorandum: The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers**, Center for Automotive Research, November 4, 2008.

http://www.cargroup.org/documents/Detroit_Three_Contraction_Impact.pdf

² McAlinden, Sean P., Debra Maranger Menk, Adam Cooper, **CAR Research Memorandum: The Impact on the U.S. Economy of Successful versus Unsuccessful Automaker Bankruptcies**, Center for Automotive Research, May 26, 2009.

<http://www.cargroup.org/pdfs/impact.pdf>

³ A sampling of reports forecasting the economic impacts if one or more U.S. automakers were to fail includes:

"The Economic Impact of the Detroit Three Automakers in Canada," The Centre for Spatial Economics, December 2008.

Scott, Robert, "When Giants Fall: Shutdown of one or more U.S. automakers could eliminate up to 3.3 million U.S. Jobs," Economic Policy Institute, December 3, 2008.

"Automaker Bankruptcy Would cost Taxpayers Four Times More Than Amount of Federal Bridge Loans," Anderson Economic Group/BBK, December 8, 2008.

Wial, Howard, "How a Metro Nation Would Feel the Loss of the Detroit Three Automakers," The Brookings Institution, Metropolitan Policy Program, December 12, 2008.

Werling, Jeffrey, "Potential Job Losses from Restructuring the U.S. Auto Industry," University of Maryland, Inform Economic Summary, December 16, 2008.

"Fact Sheet: Financing Assistance to Facilitate the Restructuring of Auto Manufacturers to Attain Financial Viability," White House, Office of the Press Secretary, December 19, 2008.

"U.S. Motor Vehicle Industry: Federal Financial Assistance and Restructuring," Congressional Research Service, 7-5700, January 30, 2009.

"Bankruptcy or Bailout—Which Would Best Help the American Auto Industry?" IHS Global Insight, February 9, 2009.

In CAR's November 4, 2008 memorandum, economic impacts were estimated for two scenarios involving a short-term, severe (50- to 100-percent) contraction of Detroit Three capacity in the United States. The job loss estimates ranged from 2.5-3 million jobs in the first year, and 1.5-2.5 million in the second year, the estimates of personal income loss ranged from \$125.1-150.7 billion in the first year, and \$86.4-138.2 billion in the second year, and the estimates of net impact to government, in terms of increased transfer payments, reduced social security receipts and reduced personal income taxes paid, ranged from \$49.9-60.1 billion in the first year, and \$33.7-54.3 billion in the second year.⁴

CAR's May 26, 2009 memorandum produced estimates for two scenarios, as well: a quick, orderly Section 363 bankruptcy (which is what happened), and a drawn-out, disorderly bankruptcy proceeding leading to liquidation of the automakers. A summary of the 2009 and 2010 employment and economic impacts is presented in Table 1.

Table 1: May 2009 Forecast of Economic Impact of Government Aid to U.S. Automotive Industry

	Best Case Estimates		Worst Case Estimates	
	2009	2010	2009	2010
Total Employment	-63,200	-179,400	-1,344,000	-446,700
Personal Income (Lost)	-\$3.4	-\$9.9	-\$68.7	-\$26.4
Increase in Transfer Payments	\$0.3	\$0.9	\$6.6	\$2.3
Decline in Social Security Receipts	-\$0.5	-\$1.3	-\$9.5	-\$3.5
Decline in Personal Income Taxes	-\$0.5	-\$1.6	-\$11.0	-\$4.2
Net Impact to Government of Avoiding the Worst Case	\$25.8 billion in 2009 \$6.5 billion in 2010			

Note: All dollar amounts are in billions of current dollars

The difference between the two scenarios presented in CAR's May 2009 memo represented the anticipated private and public benefits of avoiding the scenario of a bankruptcy liquidation of both General Motors and Chrysler. The "good bankruptcy" outcome was projected to have avoided a loss of 1.28 million jobs in 2009, and 267,300 in 2010. Personal income losses were expected to be \$65.3 billion less in 2009, and \$16.5 billion less in 2010. It was estimated that avoiding the worst case scenario provided a net government impact—in terms of changes in transfer payments, social security receipts and personal income tax receipts—of \$25.8 billion in 2009 and \$6.5 billion in 2010, a total of \$32.3 billion.

The View from 2010

Earlier this year, The White House produced a document entitled, "A Look Back at GM, Chrysler and the American Auto Industry,"⁵ which assessed that automotive employment, production and sales had begun to stabilize. Now that data are available on more than a year of General Motors and Chrysler operating results, the forecasted economic impact of the government's intervention in the auto industry can be compared against actual economic events. In so doing, a retrospective measurement of the value of the government's actions in support of the U.S. automotive industry can be constructed.

The forecast model used to produce CAR's 2008 and 2009 economic impact studies contained an underlying model of the U.S. economy. Specifically, the model used to produce the May 2009 estimates of the economic impact of "good" versus "bad" bankruptcies assumed that Gross Domestic Product

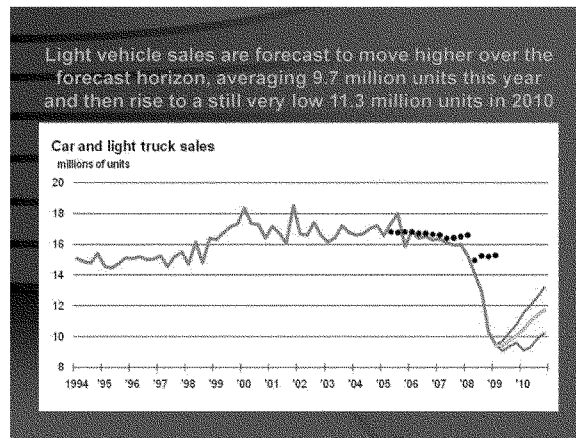
⁴McAlinden, Dziczek, Menk, op.cit., pages 4-6.

⁵"A Look Back at GM, Chrysler and the American Auto Industry," Executive Office of the President of the United States, April 21, 2010.

(GDP) would fall 3 percent in 2009, and grow at a rate of only 1 percent in 2010. In fact, the economic activity was higher in the period, with actual GDP falling 2.6 percent in 2009 and gaining at a rate of 2.5 percent in the first nine months of 2010.

Although motor vehicle sales were weak in the second half of 2009 and throughout 2010, market performance was still better than what was anticipated⁶. The weak sales were mainly attributed to the unexpectedly high levels of unemployment, and sluggish consumer confidence. If the government had not invested in the automotive industry, up to 80,000⁷ automotive jobs would have been lost, and General Motors alone would have lost one million units of sales in 2009.

Chart 1: Light Vehicle Sales Forecast

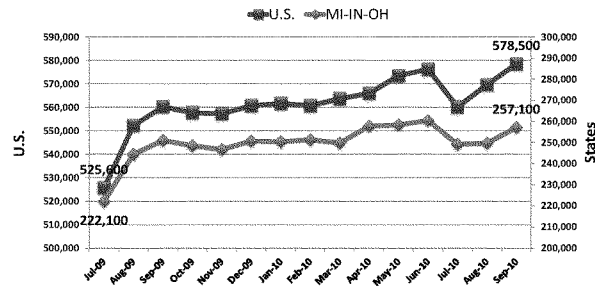


Source: Federal Reserve Bank of Chicago, June 5, 2009

Once Chrysler and GM emerged from their "orderly" bankruptcies, the growth of automotive sector employment has been strong, with 52,900 workers added since July 2009. Had GM and Chrysler not successfully emerged, those jobs would have been permanently lost.

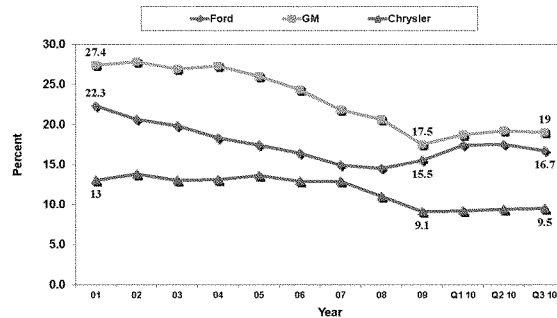
⁶ "Consensus Forecast 2009 and 2010", Federal Reserve Bank of Chicago, June 5, 2009.

⁷ In 2009, "New GM" sold roughly 1.0 million vehicles between 7/10/09 and 12/31/09. Assuming the U.S. automotive labor productivity is 12.5 units per worker, it is equivalent of 80,000 automotive jobs.

Chart 2: Motor Vehicle and Parts Manufacturing Employment, July 2009-September 2010

Source: BLS, U.S. DOL

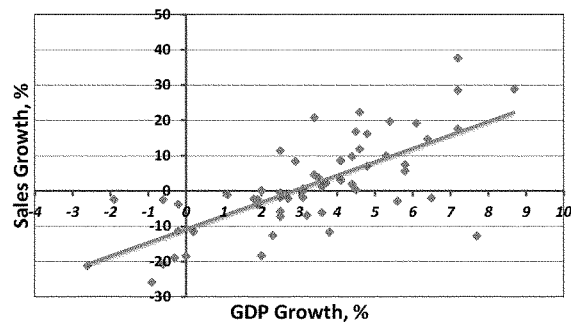
In terms of market share, the Detroit Three automakers' shares had stopped plummeting by the end of 2009, albeit in a smaller market. In the first three quarters of 2010, market shares were gradually restored. Although the domestic automakers' market shares are less likely to climb back to where they were in the beginning of the past decade, they are expected to hold up and even improve slightly in the years to come. If the U.S. government had let GM and Chrysler go bankrupt, the U.S. motor vehicle market would be dominated by foreign companies.

Chart 3: Detroit Three U.S. Market Share, 2001-2010 Q3, Sales of Detroit Three North American Owned Production

Source: CAR Research

Finally, while the U.S. economy has officially been in recovery since Q2 2009, according to the National Bureau of Economic Research, growth has been sluggish. Except for the first quarter, this year's GDP growth was lower than 2 percent SASAR. Historically speaking, vehicle sales do not increase if the GDP annual growth rate is less than 3 percent. So far this year, GDP has only grown 2.5 percent. If the sluggish economic growth continues throughout this year and into next year, overall sales will likely remain at current levels. On the other hand, if the GDP growth rate were 1 percent, as was expected had the government not intervened, auto sales would have dropped another 8 percent this year, according to historical trends (Chart 4).

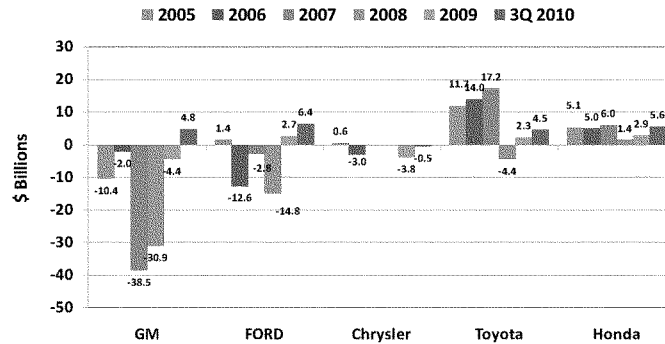
Chart 4: Need 3% GDP Growth to Have Positive Automotive Sales Growth, GDP Growth Rate and Automotive Sales Growth Rate, 1950-2009



Source: CAR Research

Against the backdrop of lackluster overall economic recovery, and the mixed bag of automotive-specific results from 2008-2010, the Detroit Three automakers have proven that they can make money at far lower volumes than was true prior to the crisis. The break-even point has been lowered for all three companies, and profits and cash flow have been positively impacted.

Chart 5: Earnings Are Positive: Corporate Net Income (Loss), 2005-2010 Q3



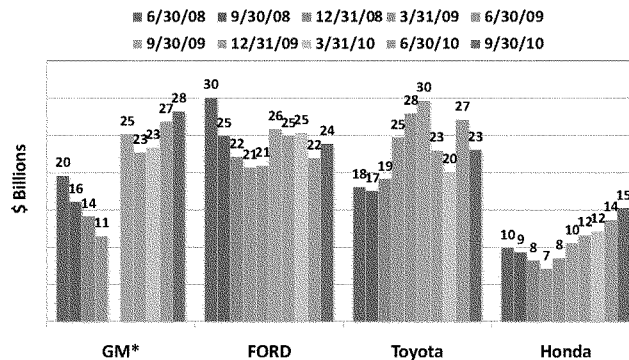
*GM represents both General Motors Corp. and General Motors Co.

**Chrysler represents Chrysler Group of DaimlerChrysler AG, Chrysler LLC, and Chrysler Group LLC.

***Toyota/Honda data reflect corresponding fiscal year financial results.

Source: Companies' financial reports

Chart 6: Cash and Cash Equivalent – Quarterly, 2008 Q2-2010 Q3



*The numbers reflect both old GM and new company after the bankruptcy. Second quarter of 2009 data was not available due to the bankruptcy process.

Source: Companies' quarterly reports.

Source: Companies' quarterly reports.

Scenario and Methodology

For purposes of this study, CAR researchers replicated the exact scenarios produced for the May 26, 2009 memorandum on the difference between the economic impacts of “good” and “bad” bankruptcies—using a model loaded with actual economic performance data for the period 2009-2010. As in the previous economic impact studies, CAR employed the Regional Economics Models, Inc. (REMI) forecasting model.

The REMI model uses annualized data. At the REMI website, www.remi.com, the resources tab provides model documentation detailing every dataset, as well as data scrubbing procedures. The REMI model provides for central bank monetary responses and federal fiscal policy responses to movements in the economy. There are three options that may be chosen for simulation purposes. Each of these options provides varying levels of federal involvement and different rates of policy response. We use the Keynesian closure option. This option has the lowest level of federal response to economic upheavals, with no fiscal intervention to economic shocks in any sector of the economy. This option provides the clearest picture of the true role that any one industrial sector has within the national and regional economies. The purpose of the study was not to forecast Fed response to the automotive industry contraction, but to show the extent to which the auto industry is a large component of the U.S. economy.

Within the REMI model, important algorithms affecting the rate of economic growth or contraction are the migration equations (the movement of population from one area or state to another). Migration occurs due to economic pulls or pushes; the migration equations used in REMI reflect the mobility of the population as experienced in the U.S. economy over the past 30 years. Therefore, the ability of a labor force to recover from this type of industrial shock is reflected in model results.

Trade with other nations, via imports and exports, is part of the model and is affected by economic changes. Exchange rates are not a focus of the model, and are incorporated into the trade effects based on historical data.

Generating meaningful results from an economic model requires:

- having an understanding of the algorithms, datasets and formulae of the model being used,
- having familiarity with how changes in various data inputs will impact results, and
- calibrating the model to historical, known outcomes.

In addition, economic simulations are most useful when combined with a theory of how model results can be used against the backdrop of current economic conditions. Every situation has aspects that are not going to be captured in a model in such a way as to produce consistently accurate forecasts. The current economy in the U.S. is extremely volatile. The employment impact results found in this study—in either of the scenarios—are quite low, because many of the employment losses due to GM's and Chrysler's downsizing have already occurred and are part of the model's baseline. For all industries, capital funds are not as readily available as they were even a year ago. Therefore, investment spending (which is needed for economic and employment recovery) is presently not occurring at the healthier levels, seen as recently as 2007. This would indicate that the recovery predictors of the model (based on 15-year historical averages) are optimistic for current economic conditions.

Results

Table 2: November 2010 Backcast of Economic Impact of Government Aid to U.S. Automotive Industry

	Best Case Estimates		Worst Case Estimates	
	2009	2010	2009	2010
Total Employment	-193,078	-171,219	-1,329,406	-485,641
Personal Income (Lost)	-\$12.61	-\$12.32	-\$84.47	-\$36.95
Increase in Transfer Payments	\$0.94	\$0.88	\$6.51	\$2.49
Decline in Social Security Receipts	-\$1.45	-\$1.41	-\$9.61	-\$4.12
Decline in Personal Income Taxes	-\$1.36	-\$1.33	-\$9.20	-\$3.99
Net Impact to Government of Avoiding the Worst Case	\$21.6 billion in 2009 \$7.0 billion in 2010			

Note: All dollar amounts are in billions of current dollars

Jobs

The May results estimated that the outcomes of the orderly bankruptcy proceedings would save 1.28 million jobs in 2009, while the current review estimates slightly lower job savings of 1.14 million jobs. For 2010, original estimates (of orderly bankruptcies vs. unsuccessful proceedings) were that 267,300 jobs would be saved, while the current review estimates that 314,400 jobs were preserved.

Personal Income

From the May forecast, personal income losses were expected to be \$65.3 billion less in 2009, and \$16.5 billion less in 2010, with the review estimates higher at \$71.9 billion for 2009 and \$24.6 billion for 2010.

Net Impact to Government

The contrast between the two studies for the net impact to government budget—lower transfer payments, higher social security receipts and higher personal income taxes paid—amounted to original estimates for a public benefit of \$25.8 billion in 2009, and \$6.5 billion in 2010 compared to new estimates of \$21.6 billion in 2009, and \$7.0 billion in 2010, for a two-year total of \$28.6 billion.

Conclusion

In May, 2009, CAR estimated that if GM and Chrysler were able to enter into bankruptcy proceedings and exit within 90 days with operating cash, the effect on the economy would be an initial loss of 9,700 jobs (total for both companies) in 2009, and a cumulative total loss of 29,000 jobs by the end of 2010. Using historical employment and economic data, CAR now estimates that 23,900 jobs were lost at these companies by the end of 2009, and a net of 21,900 jobs will have been shed at these companies by the end of 2010. The cumulative losses to the economy as of the end of 2010 are less than originally forecasted. The original forecast predicted that nearly 180,000 jobs would be lost in the U.S., while in actuality, a total of slightly more than 171,000 total jobs will have been taken out of the economy.

The forecast and the review differ most significantly for the year 2009. For this year, the original forecast estimated that job losses would be minimal for the first 6 months following the bankruptcies, and that job losses would continue throughout 2010. In actuality, the companies moved quickly to optimize production capacities and rationalize operations. While this meant that most jobs were eliminated almost immediately, the companies were able to improve their operations with surprising speed. Although the loss of jobs has been a severe blow to the economy, these companies are now poised to operate profitably and at lower levels of production and sales.

Net Public Benefit of Government Intervention

Providing government assistance to General Motors and Chrysler through quick and structured bankruptcy proceedings avoided the worst case scenario. In reviewing the economic impacts using actual economic performance for 2009 and much of 2010, the net public benefit—the difference between what CAR estimated did happen and what CAR predicted might have happened to government transfer payments, social security receipts and personal income taxes paid—was just \$4.2 billion in 2009 and \$0.5 billion in 2010.

The U.S. government provided \$80 billion in total assistance to General Motors, GMAC, Chrysler and Chrysler Financial⁸, and stands to recover a substantial amount of this financial assistance through upcoming sales of stock in the Initial Public Offerings (IPOs) at General Motors and Chrysler. To date, \$13.4 billion in principal has already been repaid, which brings the total remaining outstanding government investment to \$66.6 billion. The updated analysis contained in this memo demonstrates that even if the net return to the U.S. Treasury is \$28.6 billion (the amount of the net public benefit of the government intervention) lower than the outstanding public investment in these two companies, or \$38 billion, the public will have at least met a two-year break-even. This means that if the Treasury recovers \$0.57 on the dollar or more in upcoming equity sales, the public will have been made fully whole. Additionally, the government's actions avoided personal income losses totaling over \$96 billion, 1.1 million net job losses in 2009, and another 314,400 in 2010.

⁸ www.financialstability.gov, amount of assistance and repayments made confirmed in November 16, 2010 conversation with U.S. Treasury automotive staff.

References

- AEG/BBK. (2008). "Automaker Bankruptcy Would cost Taxpayers Four Times More Than Amount of Federal Bridge Loans." Anderson Economic Group/BBK. December 8, 2008. <www.ncsdp.com/Bankruptcy_Report_News_Release_FINAL.pdf>.
- CAR. (2009). "CAR Research Memorandum: The Impact on the U.S. Economy of Successful versus Unsuccessful Automakers Bankruptcies." Center for Automotive Research, Sean P. McAlinden, Adam Cooper and Debbie Maranger Menk. May, 2009.
- CAR. (2008). "CAR Research Memorandum: The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers." Center for Automotive Research, Sean P. McAlinden, Kristen Dzikczek and Debbie Maranger Menk. November 4, 2008.
- CAR. (2010). "Contribution of the Automotive Industry to the Economies of All Fifty States and the United States." Center for Automotive Research. Prepared for The Alliance of Automobile Manufacturers, The Association of International Automobile Manufacturers, The Motor & Equipment Manufacturers Association, The National Automobile Dealers Association and The American International Automobile Dealers Association. April, 2010.
- CAR. (2007). "Contribution of the Motor Vehicle Supplier Sector to the Economies of the United States and its 50 States." Center for Automotive Research. Kim Hill and Debbie Maranger Menk. Prepared for the Motor & Equipment Manufacturers Association. January, 2007.
- CAR. (2007). "Contribution of Toyota Motor North America to the Economies of Sixteen States and the United States, 2006." Center for Automotive Research. Kim Hill and Debbie Maranger Menk. Prepared for Toyota Motor North America. October, 2007.
- CAR. (2004). "Contribution of the U.S. Motor Vehicle Industry to the Economies of the United States, California, New York, and New Jersey in 2003" Institute of Labor and Industrial Relations, University of Michigan and the Center for Automotive Research. Sean P. McAlinden, et al. Prepared for the Alliance of Automobile Manufacturers, Inc., May 2004.
- CAR. (2003). "Economic Contribution of the Automotive Industry to the U.S. Economy – An Update." Center for Automotive Research. Sean P. McAlinden, et al. Prepared for the Alliance of Automobile Manufacturers. Fall 2003.
- CRS. (2009). "U.S. Motor Vehicle Industry: Federal Financial Assistance and Restructuring." Congressional Research Service, 7-5700. January 30, 2009. <openocrs.com/document/R40003/>.
- GM, Ford, Toyota, and Honda. (2010). Quarterly Reports from company websites.
- IHS. (2009). "Bankruptcy or Bailout—Which Would Best Help the American Auto Industry?" IHS Global Insight. February 9, 2009. <<http://scholar.iilib.cn/A-QCode~qcypj200915007.html>>.
- Scott, Robert. (2008). "When Giants Fall: Shutdown of one or more U.S. automakers could eliminate up to 3.3 million U.S. Jobs." Economic Policy Institute. December 3, 2008. <<http://www.epi.org/publications/entry/bp227/>>.

The Centre for Spatial Economics. (2008). "The Economic Impact of the Detroit Three Automakers in Canada." The Centre for Spatial Economics, December 2008.
<www.greatlakesmanufacturingcouncil.org/pdf/omcautoimpact-b.doc>.

U.S. (2010). "A Look Back at GM, Chrysler and the American Auto Industry." Executive Office of the President of the United States. April 21, 2010.
<www.whitehouse.gov/sites/default/files/rss_viewer/one_year_later_autos_report.pdf>.

University of Michigan and CAR. (2001). "Contribution of the Automotive Industry to the U.S. Economy in 1998: The Nation and Its Fifty States." Institute of Labor and Industrial Relations and the Office for the Study of Automotive Transportation, University of Michigan and the Center for Automotive Research. Sean P. McAlinden, et al. Prepared for the Alliance of Automobile Manufacturers, Inc. and the Association of International Automobile Manufacturers, Inc. Winter 2001.

University of Michigan (1998). "The Contribution of the International Auto Sector to the U.S. Economy" The Office for the Study of Automotive Transportation, Transportation Research Institute, and the Institute of Labor and Industrial Relations, University of Michigan. Sean P. McAlinden, et al. Prepared for the Association of International Automobile Manufacturers, Inc. March 1998.

University of Michigan (1992). "Competitive Survival: Private Initiatives, Public Policy and the North American Automotive Industry" Office for the Study of Automotive Transportation, University of Michigan Transportation Research Institute. Sean P. McAlinden, et al. Prepared for the U.S.-Canada Automotive Select Panel. June 1992.

Werling, Jeffrey. (2008). "Potential Job Losses from Restructuring the U.S. Auto Industry." University of Maryland, Inforum Economic Summary. December 9, 2008.
<<http://inforumweb.umd.edu/organization/conferences/outlook2008/outlook2008.html>>.

White House. (2008). "Fact Sheet: Financing Assistance to Facilitate the Restructuring of Auto Manufacturers to Attain Financial Viability." White House, Office of the Press Secretary. December 19, 2008. <www.cfr.org/publication/18070/fact_sheet.html>.

Wial, Howard. (2008). "How a Metro Nation Would Feel the Loss of the Detroit Three Automakers." The Brookings Institution, Metropolitan Policy Program. December 12, 2008.
<http://www.brookings.edu/papers/2008/1212_automakers_wial.aspx>.

